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ELECTION LAWS

OF THE

STATE OF OREGON

ALSO, THE

NATURALIZATION LAW OF THE UNITED STATES,

AND THE

CONSTITUTION OF THE STATE OF OREGON.

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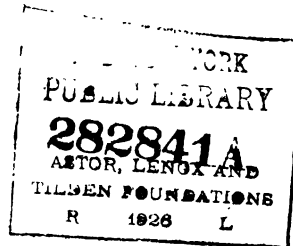


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# THE CONSTITUTION

## OF THE

### UNITED STATES OF AMERICA.<sup>1</sup>

We, the People of the United States,<sup>2</sup> in order to form a MARCH 4, 1789.  
more perfect Union, establish Justice, insure domestic <sup>Purposes for</sup>  
Tranquility, provide for the common defence, promote <sup>which the Con-</sup>  
the general Welfare, and secure the Blessings of Liberty <sup>stitution was</sup>  
to ourselves and our Posterity,<sup>3</sup> do ordain and establish <sup>ordained and</sup>  
this CONSTITUTION for the United States of America.<sup>4</sup> <sup>established.</sup>

#### ARTICLE I.

SECTION 1. All legislative Powers herein granted shall <sup>Legislative</sup>  
be vested in a Congress of the United States, which shall <sup>power vested in</sup>  
consist of a Senate and House of Representatives.<sup>5</sup> <sup>congress.</sup>

1. This constitution went into operation on Wednesday, March 4, 1789. *Owings v. Speed*, 5 Wh 420.

2. The constitution was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble declares, "by the people of the United States." *Martin v. Hunter's Lessee*, 1 Wh. 324; *Banks v. Greenleaf*, 6 Call. 277. It required not the affirmance, and could not be negatived by the State governments. When adopted it was of complete obligation, and bound the State sovereignties. *McCullough v. Maryland*, 4 Wh. 404; *Chisholm v. Georgia*, 2 Dall. 471. The States are constituent parts of the United States; they are members of one great empire; for some purposes sovereign; for some purposes subordinate. *Cohen v. Virginia*, 6 Wh. 414. The constitution is supreme over all the departments of the government, and anything which may be done, unauthorized by it, is unlawful. *Dodge v. Wolsey*, 18 How. 347. The union of the States is indissoluble by the act of any portion of them. The constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. *Texas v. White*, 7 Wall. 724. For all the purposes of the National government, the people of the United States are an integral, not a composite mass,

and their unity and identity, in this view of the subject, are not affected by their segregation by State lines, for the purposes of State government and local administration. *White v. Hart*, 13 Wall. 650.

3. The preamble to the constitution, is constantly referred to by statesmen and jurists, to aid them in the exposition of its provisions. *Chisholm v. Georgia*, 2 Dall. 475; *Brown v. Maryland*, 12 Wh. 455; 1 Story's Com. § 6.

4. The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created, by the means which are necessary for their attainment. *U. S. v. Maurice*, 2 Brock. 109. Through the instrumentality of the proper department, to which those powers are confined, it may enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. *U. S. v. Tingey*, 5 Pet. 128. As a corporation, it has capacity to sue, by its corporate title. *Dixon v. U. S.*, 1 Brock. 177; *Dugan v. U. S.*, 3 Wh. 181. It may compromise a suit, and receive real and other property in discharge of the debt in trust, and sell the same. *U. S. v. Lanis Adms*, 3 McLean, 365; *Neillson v. Lagow*, 12 How. 107.

5. See Story's Com. § 7.



MARCH 4, 1789.  
House of representatives.

SEC. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States,<sup>1</sup> and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States,<sup>2</sup> and who shall not, when elected, be an Inhabitant<sup>3</sup> of that State in which he shall be chosen.<sup>4</sup>

Representation and direct taxes to be apportioned according to respective numbers.

Census to be taken every ten years.

Number of representatives in congress.

Vacancies in representation, how filled.

Speaker and officers of H.R.; impeachment.

3. Representatives<sup>5</sup> and direct Taxes<sup>6</sup> shall be apportioned among the several States<sup>7</sup> which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.<sup>8</sup>

5. The House of Representatives shall chuse their Speaker and other Officers and shall have the sole Power of Impeachment.

1. See *Latimer v. Patton*, Cl. & Hall, 69.  
2. See, *Ramsay v. Smith*, Cl. & Hall, 23.  
3. See, *Key's case*, Cl. & Hall, 224. An inhabitant of a State is one who is "*bona fide* a member of the State, subject to all the requisitions of its laws and entitled to all the privileges and advantages which they confer." *Bailey's case*, Cl. & Hall, 411; *Forsyth's case*, *Ibid.* 497.  
4. The constitution having fixed the qualification of members, no additional qualifications can rightfully be required by the States. *Barney v. McCreery*, Cl. & Hall, 167.  
5. For modification of this provision, see Fifteenth Amendment, § 2.

6. A tax on carriages is not such a direct tax. *Hylton v. U. S.* 3 Dall. 171. Neither is a tax on the circulation of State banks. *Veazie Bank v. Fenno*, 8 Wall. 533.

7. This does not exclude the right to impose a direct tax upon the District of Columbia, in proportion to the census directed to be taken by the constitution. *Loughborough v. Blake*, 5 Wh. 317.

8. The executive of a State may receive the resignation of a member, and issue writs for a new election, without waiting to be informed by the house that a vacancy exists. *Mercer's case*, Cl. & Hall, 44; *Edward's case*, *Ibid.* 92.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature for six Years; and each Senator shall have one vote.

MARCH 4, 1789.

Senate, how composed.

2. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second year; and if Vacancies happen by Resignation,<sup>1</sup> or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments<sup>2</sup> until the next Meeting of the Legislature, which shall then fill such Vacancies.

Senators, how chosen. Each to have one vote.

One-third of the Senators to be chosen every second year.

Vacancies during recess of the Legislature of a State, how filled.

3. No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States,<sup>3</sup> and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Qualifications of Senators.

4. The Vice President of the United States shall be President of the Senate,<sup>4</sup> but shall have no Vote, unless they be equally divided.

V. President of U. S., president of the Senate.

When V. P. may vote.

5. The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of the President of the United States.

The Senate to choose their officers. When to choose President pro tempore.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice<sup>5</sup> shall preside: And no person shall be convicted without the Concurrence of two-thirds of the Members present.

Senate to have sole power to try impeachments. Chief Justice to preside, when President of U. S. is tried.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualifications to hold and enjoy any Office of honour, Trust or Profit under

Judgment in impeachment, to what it extends.

1. The Senate is a permanent body; its existence is continued and perpetual. Cushing's Law of Leg. Assemblies, 19.

2. The seat of a senator is vacated by a resignation addressed to the executive of the State, notwithstanding he may have received no notice that his resignation has been accepted. Bledsoe's case, Cl. & Hall, 869.

3. It is not competent for the executive of a State, during the recess of the Legislature, to appoint a senator to fill a vacancy, which shall happen, but has not happened at the time of the appointment. Lanman's case, Cl. & Hall, 871.

4. See, Gallatin's case, Cl. & Hall, 871.

5. See, 1 Story Com. § 739.

6. It seems that on the trial of an impeachment of the President, there being then no Vice-President, the President *pro tempore* of the Senate being a member of that body, is competent to be sworn as a member of the Court. 3 Johns. Tr. 360. When the Chief Justice presides on the trial of an impeachment, he has a right to give the casting vote. 1 Johns. Tr. 185-7. In such case, the Chief Justice may decide all questions arising in the progress of the trial, subject to the power of the Senate. 1 Johns. Tr. 185-6.

MARCH 4, 1789.

Party convicted  
subject to in-  
dictment, and  
trial at law.

Times, places  
and manner of  
electing Sena-  
tors and Repre-  
sentatives.

Congress cannot  
prescribe the  
place of elect-  
ing Senators.

Congress to as-  
semble once a  
year. When to  
assemble.

Each house to  
be the judge of  
the elections,  
etc., of its mem-  
bers.

Quorum.  
Less than a quo-  
rum may ad-  
journ from day  
to day, etc.

Rules of pro-  
ceeding, and  
punishment and  
expulsion of  
members.

Each house to  
keep a journal.

Yeas and Nays.

Adjournment of  
the house of  
congress.

Compensation  
of the senators  
and representa-  
tives.

the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

SEC. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof;<sup>1</sup> but the Congress may at any time by Law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.<sup>2</sup>

SEC. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,<sup>3</sup> and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members<sup>4</sup> for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.<sup>5</sup>

3. Each House shall keep a Journal of its Proceedings, and from time to time, publish the same, excepting such Parts as may, in their Judgment, require Secrecy; and the Yeas and Nays of the Members of either House on any question shall at the Desire of one-fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law,

1. Where the Legislature of a State has failed to "prescribe the times, places and manner" of holding elections, as required by the constitution, the governor may, in case of a vacancy, in his writ of election, give notice of the time and place of election; but a reasonable time ought to be allowed for the promulgation of the notice. *Hoge's case*, Cl. & Hall, 135. The constitution of Oregon has fixed beyond the control of the legislature, the time for election of a representative in Congress. *Shiel v. Thayer*, 2 Cong. Elect. Cas. 349.

2. The constitutional term of congress does not expire until 12 o'clock at noon, on the 4th of March. 11 Stat. App'x 11.

3. The returns from the state authorities are *prima facie* evidence only of an election, and are not conclusive upon the house. *Spaulding v. Mead*, Cl. & Hall, 157; *Reed v. Cusden*, Ibid. 353. And the refusal of the executive of a state to grant a

certificate of election, does not prejudice the rights of one who may be entitled to a seat. *Richard's case*, Ibid. 95.

4. This does not exclude the power to punish for contempts, other than members of the house. The constitution says nothing of contempts. These were left to the operation of the common law principle, that every court has a right to protect itself from insult and contempt, without which right of self protection, they could not discharge their high and important duties. *Nugent's case*, 1 Am. L. J. 139; *Anderson v. Dunn*, 6 Wh. 204; 1 *Story's Com.* § 845-9; *Bolton v. Martin*, 1 Dall. 296.

5. It seems to be settled, that a member may be expelled for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of a member. *Blount's case* cited 1 *Story's Com.* § 838; *Smith's case*, 1 Hall's L. J., 450.

and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace,<sup>1</sup> be privileged from Arrest<sup>2</sup> during their Attendance at the Session of their respective Houses, and in going to and returning from the same;<sup>3</sup> and for any Speech or Debate in either House, they shall not be questioned in any other Place.

MARCH 4, 1789.  
Privileged from arrest.  
Not to be questioned in any other place for any speech or debate in either house.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office<sup>4</sup> under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.<sup>5</sup>

Appointment to office of Senators and representatives.  
Person holding office under the U. S. not to be a member of either house.

SEC. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Bills for raising revenue.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States. If he approve he shall sign it,<sup>6</sup> but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds<sup>7</sup> of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a Law. But in all such Cases the Votes of both Houses shall be de-

Bills, after having passed congress to be presented to the President for his approval.

Proceedings when the President disapproves.

1. This would seem to extend to all indictable offences, as well those which are in fact attended with force and violence, as those which are only constructive breaches of the peace of the government, inasmuch as they violate its good order. 1 Black. Com. 166; 1 Story's Com., § 865.

2. They are privileged not only from arrest both on judicial and mesne process, but also from the service of a summons or other civil process, while in attendance on their public duties. Geyer's Lessee v. Irwin, 4 Dall. 107; Nones v. Edsall, 1 Wall. Jr. 191; 1 Story's Com. § 860; Coxe v. McClenachan, 3 Dall. 478.

3. One who goes to Washington duly commissioned to represent a state in congress, is privileged from arrest while going, remaining and returning, though it be subsequently decided by congress that he is not entitled to a seat there; he is protected until he reaches home, if he return as soon as possible after such decision. Dunton v. Hulstead, 4 Penn. L. J. 237.

4. The acceptance by a member of any office under the United States, after he has been elected to, and taken his seat in congress, operates as a forfeiture of his seat. Van Ness' case, Cl. & Hall, 122.

5. To execute the duties of an office under the United States, after one is elected to congress, is not a disqualification; such office being resigned prior to the taking of the seat. Hammond v. Herick, Cl. & Hall, 287; Earle's case, Ibid. 314; Munford's case, Ibid. 316.

6. Every bill takes effect as a law, from the time when it is approved by the president, and then its effect is prospective and not retrospective. The doctrine, that in law, there is no fraction of a day, is a mere legal fiction, and has no application in such a case. In the matter of Richardson, 2 Story, 571; People v. Campbell, 1 Cal. 400. But see, in the matter of Welman, 20 Verm. 653. In the matter of Howes, 21 Ibid. 619.

7. On July 7, 1856, the senate of the United States decided, by a vote of 34 to 7, that two-thirds of a quorum only were requisite to pass a bill over the president's veto, and not two-thirds of the whole senate. 9 L. E. 196. In the ratification of treaties, it is expressly provided that two-thirds of the senators present shall concur. See Oush. Law of Leg. Assemblies, § 2,387.

MARCH 4, 1789.

terminated by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every order, resolution or vote of both houses (except on a question of adjournment) to be presented to the president of the U. S.

3. Every Order, Resolution,<sup>1</sup> or Vote to which the Concurrence of the Senate and the House of Representatives may be necessary (except on a question of Adjournment), shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of Congress.

To lay taxes, and provide for the common defence and welfare. Duties to be uniform.

SEC. 8. The Congress shall have Power

1. To lay and collect Taxes, Duties, Imposts, and Excises,<sup>2</sup> to pay the Debts and provide for the common Defence and general welfare of the United States,<sup>3</sup> but all Duties, Imposts, and Excises, shall be uniform throughout the United States;

To borrow money.

2. To borrow Money on the credit of the United States;<sup>4</sup>

1. A joint resolution, approved by the president, or duly passed without his approval, has all the effect of a law. But separate resolutions of either house, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the president or of the heads of departments. 6 Opin. 680.

2. The power to levy and collect taxes, duties, imports and excises, is coextensive with the territory of the United States. *Loughborough v. Blake*, 5 Wh. 317. Congress may levy a tax upon certain businesses, by the imposition of a license fee. *License Tax Cases*, 5 Wall. 482; 5 Bl. C. C. 204. But it cannot levy a tax upon the salary of a judicial officer of a State. *The Collector v. Day*, 11 Wall. 113.

3. Congress is not empowered to tax for those

purposes which are within the exclusive province of the states. *Gibbons v. Ogden*, 9 Wh. 199. The taxing power is not limited by the prohibition against taking private property without compensation. *Gilman v. Sheboygan*, 2 Bl. 510.

4. The states have no power to tax the loans of the United States. *Weston v. City Council of Charleston*, 2 Pet. 449, 465; *Bank of Com. v. Commissioners of Taxes of New York*, 2 Bl. 620; *Bank Tax Case*, 2 Wall. 200; *Van Allen v. The Assessors*, 3 Wall. 573; *People v. The Commissioners*, 4 Wall. 244; *Bradley v. The People*, 4 Wall. 459; *Bank v. Supervisors*, 7 Wall. 26; *Bank v. Mayor of New York*, 7 Wall. 16; *Society for Savings v. Coite*, 6 Wall. 594; *Provident Institution v. Massachusetts*, *Ibid.* 611; *Hamilton Co. v. Massachusetts*, *Ibid.* 632; *Bank of Louisville v. Kentucky*, 9 Wall. 353.

3. To regulate Commerce<sup>1</sup> with foreign Nations<sup>2</sup> and among the several States<sup>3</sup> and with the Indian Tribes;<sup>4</sup>
4. To establish an uniform Rule of Naturalization;<sup>5</sup> and uniform Laws on the subject of Bankruptcies throughout the United States;<sup>6</sup>
5. To coin money<sup>7</sup> regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;<sup>8</sup>
7. To establish Post Offices and post Roads;<sup>9</sup>
8. To promote the progress of Science and useful Arts,<sup>10</sup>

MARCH 4, 1789.

To regulate commerce.

Naturalization and bankruptcies.

To coin money and fix the standard of weights and measures.

To punish counterfeiters.

Post offices and roads.

To promote the progress of science and useful arts.

1. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. *Gibbons v. Ogden*, 9 Wh. 196. Commerce with foreign nations and among the several states, can mean nothing more than intercourse with those nations, and among those states, for the purposes of trade, be the object of trade what it may; and this intercourse must include all the means by which it can be carried on, whether by the free navigation of the waters of the several states, or by a passage overland through the states, where such passage becomes necessary to the commercial intercourse between the states. *Corfield v. Coryell*, 4 W. C. C. 378; *Penn. v. Wheeling & Bel. Bridge Co.*, 18 How. 421; *Columbus Ins. Co. v. Peoria Bridge Co.*, 6 McLean, 70; *Columbus Ins. Co. v. Curtenius*, *Ibid.* 209; *Jolly v. Terre Haute Draw Bridge Co.*, *Ibid.* 237; *U. S. v. Railroad Bridge Co.*, *Ibid.* 518. This clause confers the power to impose embargoes. *Gibbons v. Ogden*, 9 Wh. 191; *U. S. v. The William*, 2 Hall L. J., 255, 272. And to punish crimes upon stranded vessels. *U. S. v. Coombs*, 12 Pet. 72. See also, *Gibson v. Ogden*, 9 Wh. 263; *N. Y. v. Milln*, 11 Pet. 102; *Cooley v. Board of Wardens*, 12 How. 299; *Smith v. Maryland*, 18 How. 71; *Dunham v. Lamphere*, 3 Gray, 268; *Ex parte McNeil*, 13 Wall. 238; *Edwards v. Steamship Panama*, 1 Deady, 35; *S. C.*, 1 Or., 418.

2. A state law which requires the masters of vessels engaged in foreign commerce, to pay a certain sum to a state officer, on account of every passenger brought from a foreign country into the state, conflicts with the constitution and laws of the United States. *Smith v. Turner*, 7 How. 283; see also, *Elkison v. Delusselline*, 2 Wh. Cr. Cas. 56; 1 Opin. 669; 2 Opin. 426; *Brown v. Maryland*, 12 Wh. 419; *Nathan v. Louisiana*, 8 How. 73; *Mager v. Grima*, *Ibid.* 490; *Thurlow v. Massachusetts*, 5 How. 504; *The State v. Allmond*, 4 Am. L. R. 538; *Withers v. Buckley*, 20 How. 84. Fees to port wardens, when illegal, because a regulation of commerce. *Southern Steamship Co. v. The Port Wardens of N. C.*, 6 Wall. 31.

3. Congress has power to prevent the obstruction of any navigable river, which is a means of commerce between any two or more states. *Works v. Junction Railroad*, 5 McLean, 426; *Jolly v. Terre Haute Draw Bridge Co.*, 6 *Ibid.* 237; *Devoe v. Pennre Ferry Bridge Co.*, 3 Am. L. R., 79. Where the stream is wholly within a single state, see *Veale v. Moor*, 14 How. 568; *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet. 251; *Silliman v. Hudson River Bridge Co.*, 2 Wall. 403; *Gilman v. Philadelphia*, 3 Wall. 703; *The Passaic Bridge*, *Ibid.* 782. Railways, as a means of carrying on commerce, are equally subject to the regulation of congress as

steamboats. *Gray v. Clinton Bridge*, 16 Am. L. R. 149.

4. Under the power to regulate commerce with the Indian tribes, congress have power to prohibit all intercourse with them, except under a license. *U. S. v. Clena*, 1 McLean, 254. And may also prohibit the sale of liquor to an Indian, under the charge of an Indian agent, within the limits of a state. *U. S. v. Holliday*, 3 Wall. 407. But this power does not confer on the national government a general jurisdiction over an Indian territory, within the boundaries of a state. *U. S. v. Bailey*, 1 McLean, 234. An act of congress may supersede a prior treaty with an Indian tribe. *The Cherokee Tobacco*, 11 Wall. 621.

5. The power to pass naturalization laws, is exclusively in congress. *Chirac v. Chirac*, 2 Wh. 269; *U. S. v. Villato*, 2 Dall. 372; *Thurlow v. Massachusetts*, 5 How. 585; *Smith v. Turner*, 7 *Ibid.* 556; *Golden v. Prince*, 3 W. C. C. 314; *Dred Scott v. Sanford*, 19 How. 405. This power is exclusively in congress. *Golden v. Prince*, 3 W. C. C. 313. To what the power extends. *In re Klein*, 1 How. 277; *Mitchel v. Great Works M. & M. Co.*, 2 Story. 648; *In re Arnold*, 16 Am. L. R. 624; *In re Muller et al.*, 1 Deady, 523.

6. The states have authority to pass bankrupt laws, provided they do not impair the obligation of contracts, and provided there be no act of congress in force to establish a uniform system of bankruptcy, conflicting with such laws. *Sturges v. Crowninshield*, 4 Wh. 122; *McMillan v. McNeill*, *Ibid.* 209; and see, *Farm. & Mech. Bank v. Smith*, 6 Wh. 131; *Ogden v. Saunders*, 12 Wh. 213; *Mason v. Halle*, *Ibid.* 370; *Boyle v. Zacharie*, 6 Pet. 348, 635; *Beers v. Houghton*, 9 *Ibid.* 329; *Cook v. Moffat*, 5 How. 295.

7. Congress has power to give to treasury notes the character and qualities of money. *Legal Tender Cases*, 12 Wall. 529.

8. The power to punish the crime of passing counterfeit money, is possessed by the states. *Fox v. Ohio*, 5 How. 410. Congress may provide for punishing the crime of bringing into the United States false, forged and counterfeit coins, made in the similitude of coins of the United States, and also for the crime of uttering and passing the same. *U. S. v. Marigold*, 9 How. 560.

9. It is under this power that congress has adopted the mail regulations of the Union, and punish all depredations on the mail. *Sturtevant v. City of Alton*, 3 McLean, 393. As to the power to establish post roads, see, *Penn. v. Wheeling & Belmont Bridge Co.*, 18 How. 421.

10. Patents are entitled to a liberal construction, since they are not granted as restrictions upon the rights of the community, "but to promote the progress of science and the useful arts." *Blanchard v.*

MARCH 4, 1789. by securing for limited Times to Authors' and Inventors the exclusive Right to their respective Writings and Discoveries;

Inferior tribunals. 9. To constitute tribunals inferior<sup>2</sup> to the supreme Court;<sup>3</sup>  
Crimes on the high seas and against the law of nations. 10. To define and punish Piracies<sup>4</sup> and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare war. Letters of Marque and capture. 11. To declare War, grant Letters<sup>5</sup> of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support armies. 12. To raise and support Armies,<sup>6</sup> but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a navy 13. To provide and maintain a Navy.

Government of the army and navy. 14. To make Rules<sup>7</sup> for the Government and Regulation of the land and naval Forces.

Sprague, 3 Sumn. 535; Grant v. Raymond, 6 Pet. 218; Hogg v. Emerson, 6 How. 486; Brooks v. Fiske, 15 Ibid. 223. The power of congress upon the subject of patents is plenary by the terms of the constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify their legislation at their pleasure, so that they do not take away the rights of property in existing patents. McClurg v. Kingsland, 1 Ibid. 206. Therefore congress has the power to grant the extension of a patent, which has been renewed under the act of 1836. Bloomer v. Stolley, 5 McLean, 158. Their power to reserve rights and privileges to assignees, on extending the terms of a patent, is incidental to the general power conferred by the constitution. Blanchard Gun Stock Turning Fac. v. Warner, 1 Blatch. 258. Congress is not empowered to pass laws for the benefit of authors and inventors, except as a means of promoting the progress of "science and the useful arts." Martinetti v. Maguire, 1 Deady, 223. It cannot grant the exclusive right to exhibit an immoral spectacle. Ibid. 222.

1. In the United States, an author has no exclusive property in a published work, except under some act of congress. Wheaton v. Peters, 8 Pet. 591, and see Dudley v. Mayhew, 3 Comst. 9.

2. See American Ins. Co. v. Canter, 1 Pet. 546.

3. The crime of piracy is defined by the law of nations with reasonable certainty. U. S. v. Smith, 5 Wh. 153. For definition of a pirate, see, U. S. v. Baker, 5 Bl. C. C. 6.

4. As a consequence of the power of declaring war and making treaties, the government possesses the power of acquiring territory either by conquest or treaty. American Ins. Co. v. Canter, 1 Pet. 542. When the legislative authority has declared war, the executive authority to whom its execution is confided, is bound to carry it into effect; he has a discretion vested in him as to the manner and extent; but he cannot lawfully transcend the rules of warfare established among civilized nations. Brown v. U. S., 8 Cr. 153. The United States, under the present constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory and govern it as such, until in the judgment of congress, it has sufficient population to entitle it to be admitted as a State of the Union. Dred Scott v. Sanford, 19

How. 447. A state of actual war may exist without any formal declaration of it by either party; and this is true both of a civil and foreign war. A civil war exists whenever the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that courts cannot be kept open, and may be prosecuted on the same footing as if those opposing the government were foreign invaders. Prize Cases, 2 Black. 635. The effect of war upon the citizens of the hostile nations. The William Bagaley, 5 Wall. 337. The President can recognize a state of war as actually existing, and the courts are bound by such recognition. Semmes v. City Fire Insurance Co., 6 Bl. C. C. 445. Congress can determine what property of public enemies shall be confiscated. U. S. v. Miller, 11 Wall. 229. It may carry on a civil war as well as a foreign one. Tyler v. DeTREE, Ibid, 311. Authority to suppress rebellion, is found in that to suppress insurrection and carry on war. Texas v. White, 7 Wall. 700.

5. Congress has a constitutional power to enlist minors in the army or navy of the United States, without the consent of their parents. U. S. v. Bainbridge, 1 Mass. 71; Case of Emanuel Roberts, 2 Hall's L. J., 172; U. S. v. Stewart, Crabbe, 265; Commonwealth v. Murray, 4 Penn. 487. Ex parte Brown, 5 Cr. C. C. 554. Public policy requires that a minor shall be at liberty to enter into a contract to serve the State, whenever such contract is not positively forbidden by the State itself. Commonwealth v. Gamble, 11 S. & R. 94; The King v. Rutherford Greys, 1 Barn. & Cress. 345. Under the authority "to raise and support armies," congress has power to bestow bounties and pensions upon those who may engage in the military service of the United States. U. S. v. Fairchild, 1 Ab. 75. Under act of 1862, the oath of a recruit as to his age, is conclusive. Ex parte Cline, 1 Ben. 338; Ex parte Stokes, Ibid. 341; Ex parte Riley, Ibid. 408. The validity of an enlistment into the military service of the United States, may be enquired into on habeas corpus. 1 Dillon, 587.

6. The army regulations made pursuant to authority of congress, have the force of law. Gratiot v. The United States, 4 How. 80. The duties and powers of military officers are regulated by law, and are for the courts to determine. U. S. v. Willard, 1 Pa. 539. Punishment of officers in the navy. 20 How. 165. Trial of civilian by military

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;<sup>1a</sup>

MARCH 4, 1789.  
Calling forth  
the militia.

16. To provide for organizing, arming and disciplining the Militia, and for governing such part of them as may be employed in the Service of the United States,<sup>2</sup> reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To provide for  
the organization  
&c., of the  
militia.

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States,<sup>3</sup> and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;<sup>4</sup>—  
and

Exclusive legis-  
lation over seat  
of government  
of U. S.

Exclusive au-  
thority over  
places pur-  
chased for forts,  
&c.

18. To make all laws which shall be necessary<sup>5</sup> and proper for carrying into Execution the forgoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

To make all  
necessary laws.

commission. *Ex parte Milligan*, 4 Wall. 3; *Ex parte Egan*, 5 Bl. C. C. 319. A military officer is not responsible for an act done in obedience to the command of his superior, not illegal on its face; 1 Dedy, 244.

1. The act of 1795, which confers power on the president to call forth the militia in certain exigencies, is constitutional, and the president is the exclusive and final judge whether the exigency has arisen. *Martin v. Mott*, 12 Wh. 19.

2. The militia of the several states are not subject to martial law, unless they are in the actual service of the United States. *Mills v. Martin*, 19 Johns. 7. Militiamen are not considered in the service of the United States, until actually mustered in, at the place of rendezvous. *Houston v. Moore*, 5 Wh. 1; *Ex Parte Inons*, 5 Bl. C. C. 166. So far as congress has provided for organizing the militia, the legislative powers of the states are excluded. *Houston v. Moore*, 5 Wh. 20. Resistance to enrollment and draft, under acts of 1863 and 1864, see. *U. S. v. Scott*, 3 Wall. 642; *U. S. v. Murphy*, *Ibid*. 649.

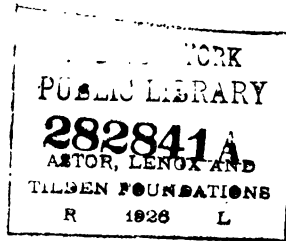
3. This includes the power of taxation. *Loughborough v. Blake*, 5 Wh. 317. The power of congress over the District of Columbia, is limited by the provisions of the constitution. *U. S. v. Moore*; 1 Cr. 360 n.

4. The right of exclusive legislation, carries with it the right of exclusive jurisdiction. *U. S. v. Cornell*, 2 Mas. 60, 91; 6 Opin. 577; *U. S. v. Donlan*, 5 Bl. C. C. 284; *U. S. v. Barney*, *Ibid*. 294; *U. S. v. Stahl*, *McCañon*. 208. But the purchase of lands by the United States for public purposes, within the limits of a state, does not of itself oust the jurisdiction of such state, over the lands so purchased. *U. S. v. Cornell*, 2 Mas. 60. The constitution prescribes the only manner in which the

United States can acquire lands as a sovereign power, and they only hold as an individual when they obtain it otherwise. *Commonwealth v. Young Brightly*, 302; *People v. Godfrey*, 17 Johns. 225; *U. S. v. Traver*, 2 Wh. Cr. Cas. 490; *People v. Lent*, *Ibid*. 548. Whether the states have the right to tax the lands purchased by the United States, for public purposes, although purchased without the consent of the state. See, *U. S. v. Weise*, 2 Wall. Jr. 72: 7 Opin. 628.

5. This does not mean absolutely necessary, nor does it imply the use of only the most direct and simple means calculated to produce the end. *Commonwealth v. Lewis*, 6 Binn. 290-1; *McCullough v. Maryland*, 4 Wh. 413; *U. S. v. Fisher*, 2 Cr. 358. *Hepburn v. Griswold*, 8 Wall. 603; *Legal Tender Cases*, 12 Wall. 457. And therefore congress had power to charter the bank of the United States, as a necessary and useful instrument of the fiscal operations of the government. *Ibid*. 316, 422. So, also, it has power, under this general authority, to provide for the punishment of any offences which interfere with, obstruct, or prevent commerce or navigation with foreign states, and among the several states, although such offences may be committed on land. *U. S. v. Combs*, 12 Pet. 78. Congress having the undisputed power to provide a paper currency for the whole country, may therefore restrain the circulation of any notes not issued under its own authority. *Veazie Bank v. Fenno*, 8 Wall. 533. Congress having the power to suspend the writ of *habeas corpus* in case of rebellion or invasion, may therefore pass laws for the protection or indemnity of persons engaged in making arrests without legal warrant or cause in pursuance of an act authorizing such suspension. *McCall v. McDowell*, 1 Dedy, 254.





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# THE CONSTITUTION

## OF THE

### UNITED STATES OF AMERICA.<sup>1</sup>

We, the People of the United States,<sup>2</sup> in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity,<sup>3</sup> do ordain and establish this CONSTITUTION for the United States of America.<sup>4</sup>

#### ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.<sup>5</sup>

1. This constitution went into operation on Wednesday, March 4, 1789. *Owings v. Speed*, 5 Wh 420.

2. The constitution was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble declares, "by the people of the United States." *Martin v. Hunter's Lessee*, 1 Wh. 324; *Banks v. Greenleaf*, 6 Call. 277. It required not the affirmance, and could not be negatived by the State governments. When adopted it was of complete obligation, and bound the State sovereignties. *McCullough v. Maryland*, 4 Wh. 404; *Chisholm v. Georgia*, 2 Dall. 471. The States are constituent parts of the United States; they are members of one great empire; for some purposes sovereign; for some purposes subordinate. *Cohen v. Virginia*, 6 Wh. 414. The constitution is supreme over all the departments of the government, and anything which may be done, unauthorized by it, is unlawful. *Dodge v. Wolsley*, 18 How. 347. The union of the States is indissoluble by the act of any portion of them. The constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. *Texas v. White*, 7 Wall. 724. For all the purposes of the National government, the people of the United States are an integral, not a composite mass,

and their unity and identity, in this view of the subject, are not affected by their segregation by State lines, for the purposes of State government and local administration. *White v. Hart*, 13 Wall. 650.

3. The preamble to the constitution, is constantly referred to by statesmen and jurists, to aid them in the exposition of its provisions. *Chisholm v. Georgia*, 2 Dall. 475; *Brown v. Maryland*, 12 Wh. 455; 1 Story's Com. § 6.

4. The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created, by the means which are necessary for their attainment. *U. S. v. Maurice*, 2 Brock. 109. Through the instrumentality of the proper department, to which those powers are confined, it may enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. *U. S. v. Tingey*, 5 Pet. 128. As a corporation, it has capacity to sue, by its corporate title. *Dixon v. U. S.*, 1 Brock. 177; *Dugan v. U. S.*, 3 Wh. 181. It may compromise a suit, and receive real and other property in discharge of the debt in trust, and sell the same. *U. S. v. Lanis Adms*, 3 McLean, 365; *Neilson v. Lagow*, 12 How. 107.

5. See Story's Com. § 7.

MARCH 4, 1789.  
Purposes for which the Constitution was ordained and established.

Legislative power vested in congress.

MARCH 4, 1789.  
House of representatives.

SEC. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States,<sup>1</sup> and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States,<sup>2</sup> and who shall not, when elected, be an Inhabitant<sup>3</sup> of that State in which he shall be chosen.<sup>4</sup>

Representation and direct taxes to be apportioned according to respective numbers.

3. Representatives<sup>5</sup> and direct Taxes<sup>6</sup> shall be apportioned among the several States<sup>7</sup> which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such Enumeration shall be made, the State of New Hampshire shall be entitled to chuse three. Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Census to be taken every ten years.

Number of representatives in congress.

Vacancies in representation, how filled.

4. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.<sup>8</sup>

Speaker and officers of H. R. impeachment.

5. The House of Representatives shall chuse their Speaker and other Officers and shall have the sole Power of Impeachment.

1. See *Latimer v. Patton*, Cl. & Hall, 69.

2. See, *Ramsay v. Smith*, Cl. & Hall, 23.

3. See, *Key's case*, Cl. & Hall, 224. An inhabitant of a State is one who is "*bona fide* a member of the State, subject to all the requisitions of its laws and entitled to all the privileges and advantages which they confer." *Bailey's case*, Cl. & Hall, 411; *Forsyth's case*, *Ibid.* 497.

4. The constitution having fixed the qualification of members, no *additional* qualifications can rightfully be required by the States. *Barney v. McCreery*, Cl. & Hall, 167.

5. For modification of this provision, see Fifteenth Amendment, § 2.

6. A tax on carriages is not such a direct tax. *Hylton v. U. S.* 3 Dall. 171. Neither is a tax on the circulation of State banks. *Veazie Bank v. Fenno*, 8 Wall. 533.

7. This does not exclude the right to impose a direct tax upon the District of Columbia, in proportion to the census directed to be taken by the constitution. *Loughborough v. Blake*, 5 Wh. 317.

8. The executive of a State may receive the resignation of a member, and issue writs for a new election, without waiting to be informed by the house that a vacancy exists. *Mercer's case*, Cl. & Hall, 44; *Edward's case*, *Ibid.* 92.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature for six Years; and each Senator shall have one vote.

MARCH 4, 1789.

Senate, how composed.

2. Immediately after they shall be assembled in consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second year;

Senators, how chosen. Each to have one vote.

One-third of the Senators to be chosen every second year.

and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Vacancies during recess of the Legislature of a State, how filled.

3. No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Qualifications of Senators.

4. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

V. President of U. S., president of the Senate.

When V. P. may vote.

5. The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of the President of the United States.

The Senate to choose their officers. When to choose President pro tempore.

6. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the Concurrence of two-thirds of the Members present.

Senate to have sole power to try impeachments. Chief Justice to preside, when President of U. S. is tried.

7. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualifications to hold and enjoy any Office of honour, Trust or Profit under

Judgment in impeachment, to what it extends.

1. The Senate is a permanent body; its existence is continued and perpetual. Cushing's Law of Leg. Assemblies, 19.

2. The seat of a senator is vacated by a resignation addressed to the executive of the State, notwithstanding he may have received no notice that his resignation has been accepted. Bledsoe's case, Cl. & Hall, 889.

3. It is not competent for the executive of a State, during the recess of the Legislature, to appoint a senator to fill a vacancy, which shall happen, but has not happened at the time of the appointment. Lanman's case, Cl. & Hall, 871.

4. See, Gallatin's case, Cl. & Hall, 871.

5. See, 1 Story Com. § 739.

6. It seems that on the trial of an impeachment of the President, there being then no Vice-President, the President pro tempore of the Senate being a member of that body, is competent to be sworn as a member of the Court. 3 Johns. Tr. 360. When the Chief Justice presides on the trial of an impeachment, he has a right to give the casting vote. 1 Johns. Tr. 185-7. In such case, the Chief Justice may decide all questions arising in the progress of the trial, subject to the power of the Senate. 1 Johns. Tr. 185-6.

MARCH 4, 1789.

Party convicted  
subject to in-  
dictment, and  
trial at law.

Times, places  
and manner of  
electing Sena-  
tors and Repre-  
sentatives.

Congress cannot  
prescribe the  
place of elect-  
ing Senators.

Congress to as-  
semble once a  
year. When to  
assemble.

Each house to  
be the judge of  
the elections,  
etc., of its mem-  
bers.

Quorum.  
Less than a quo-  
rum may ad-  
journ from day  
to day, etc.

Rules of pro-  
ceeding, and  
punishment and  
expulsion of  
members.

Each house to  
keep a journal.

Yeas and Nays.

Adjournment of  
the house of  
congress.

Compensation  
of the senators  
and representa-  
tives.

the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

SEC. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof;<sup>1</sup> but the Congress may at any time by Law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.<sup>2</sup>

SEC. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,<sup>3</sup> and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the Rules of its Proceedings, punish its Members<sup>4</sup> for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.<sup>5</sup>

3. Each House shall keep a Journal of its Proceedings, and from time to time, publish the same, excepting such Parts as may, in their Judgment, require Secrecy; and the Yeas and Nays of the Members of either House on any question shall at the Desire of one-fifth of those Present, be entered on the Journal.

4. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law,

1. Where the Legislature of a State has failed to "prescribe the times, places and manner" of holding elections, as required by the constitution, the governor may, in case of a vacancy, in his writ of election, give notice of the time and place of election; but a reasonable time ought to be allowed for the promulgation of the notice. Hoge's case, Cl. & Hall, 135. The constitution of Oregon has fixed beyond the control of the legislature, the time for election of a representative in Congress. Shiel v. Thayer, 2 Cong. Elect. Cas. 349.

2. The constitutional term of congress does not expire until 12 o'clock at noon, on the 4th of March. 11 Stat. App'x 11.

3. The returns from the state authorities are *prima facie* evidence only of an election, and are not conclusive upon the house. Spaulding v. Mead, Cl. & Hall, 157; Reed v. Coaden, Ibid. 353. And the refusal of the executive of a state to grant a

certificate of election, does not prejudice the rights of one who may be entitled to a seat. Richard's case, Ibid. 95.

4. This does not exclude the power to punish for contempts, other than members of the house. The constitution says nothing of contempts. These were left to the operation of the common law principle, that every court has a right to protect itself from insult and contempt, without which right of self protection, they could not discharge their high and important duties. Nugent's case, 1 Am. L. J. 139; Anderson v. Dunn, 6 Wh. 204; 1 Story's Com. § 845-9; Bolton v. Martin, 1 Dall. 296.

5. It seems to be settled, that a member may be expelled for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of a member. Blount's case cited 1 Story's Com. § 838; Smith's case, 1 Hall's L. J., 450.

and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony, and Breach of the Peace,<sup>1</sup> be privileged from Arrest<sup>2</sup> during their Attendance at the Session of their respective Houses, and in going to and returning from the same;<sup>3</sup> and for any Speech or Debate in either House, they shall not be questioned in any other Place.

MARCH 4, 1789.

Privileged from arrest.

Not to be questioned in any other place for any speech or debate in either house.

2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office<sup>4</sup> under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.<sup>5</sup>

Appointment to office of Senators and representatives.

Person holding office under the U. S. not to be a member of either house.

SEC. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Bills for raising revenue.

2. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States. If he approve he shall sign it,<sup>6</sup> but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds<sup>7</sup> of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a Law. But in all such Cases the Votes of both Houses shall be de-

Bills, after having passed congress to be presented to the President for his approval.

Proceedings when the President disapproves.

1. This would seem to extend to all indictable offences, as well those which are in fact attended with force and violence, as those which are only constructive breaches of the peace of the government, inasmuch as they violate its good order. 1 Black. Com. 166; 1 Story's Com., § 865.

2. They are privileged not only from arrest both on judicial and meane process, but also from the service of a summons or other civil process, while in attendance on their public duties. Goyer's Lessee v. Irvin, 4 Dall. 107; Nones v. Edsall, 1 Wall. Jr. 191; 1 Story's Com. § 860; Cox v. McClenachan, 3 Dall. 478.

3. One who goes to Washington duly commissioned to represent a state in congress, is privileged from arrest while going, remaining and returning, though it be subsequently decided by congress that he is not entitled to a seat there; he is protected until he reaches home, if he return as soon as possible after such decision. Dunton v. Halstead, 4 Penn. L. J. 237.

4. The acceptance by a member of any office under the United States, after he has been elected to, and taken his seat in congress, operates as a forfeiture of his seat. Van Ness' case, Cl. & Hall, 122.

5. To execute the duties of an office under the United States, after one is elected to congress, is not a disqualification; such office being resigned prior to the taking of the seat. Hammond v. Herick, Cl. & Hall, 287; Earle's case, Ibid. 314; Munford's case, Ibid. 316.

6. Every bill takes effect as a law, from the time when it is approved by the president, and then its effect is prospective and not retrospective. The doctrine, that in law, there is no fraction of a day, is a mere legal fiction, and has no application in such a case. In the matter of Richardson, 2 Story, 571; People v. Campbell, 1 Cal. 400. But see, in the matter of Welman, 20 Verm. 653. In the matter of Howes, 21 Ibid. 619.

7. On July 7, 1856, the senate of the United States decided, by a vote of 34 to 7, that two-thirds of a quorum only were requisite to pass a bill over the president's veto, and not two-thirds of the whole senate. 9 L. R. 196. In the ratification of treaties, it is expressly provided that two-thirds of the senators present shall concur. See Oush. Law of Leg. Assemblies, § 2,387.

MARCH 4, 1789. terminated by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every order, resolution or vote of both houses (except on a question of adjournment) to be presented to the president of the U. S.

3. Every Order, Resolution,<sup>1</sup> or Vote to which the Concurrence of the Senate and the House of Representatives may be necessary (except on a question of Adjournment), shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of Congress.

To lay taxes, and provide for the common defence and welfare. Duties to be uniform.

SEC. 8. The Congress shall have Power

1. To lay and collect Taxes, Duties, Imposts, and Excises,<sup>2</sup> to pay the Debts and provide for the common Defence and general welfare of the United States,<sup>3</sup> but all Duties, Imposts, and Excises, shall be uniform throughout the United States;

To borrow money.

2. To borrow Money on the credit of the United States;<sup>4</sup>

1. A joint resolution, approved by the president, or duly passed without his approval, has all the effect of a law. But separate resolutions of either house, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the president or of the heads of departments. 6 Opin. 680.

2. The power to levy and collect taxes, duties, imports and excises, is coextensive with the territory of the United States. *Loughborough v. Blake*, 5 Wh. 317. Congress may levy a tax upon certain businesses, by the imposition of a license fee. *License Tax Cases*, 5 Wall. 462; 5 Bl. C. C. 204. But it cannot levy a tax upon the salary of a judicial officer of a State. *The Collector v. Day*, 11 Wall. 113.

3. Congress is not empowered to tax for those

purposes which are within the exclusive province of the states. *Gibbons v. Ogden*, 9 Wh. 199. The taxing power is not limited by the prohibition against taking private property without compensation. *Gilman v. Sheboygan*, 2 Bl. 610.

4. The states have no power to tax the loans of the United States. *Weston v. City Council of Charleston*, 2 Pet. 449, 465; *Bank of Com. v. Commissioners of Taxes of New York*, 2 Bl. 620; *Bank Tax Case*, 2 Wall. 200; *Van Allen v. The Assessors*, 3 Wall. 573; *People v. The Commissioners*, 4 Wall. 244; *Bradley v. The People*, 4 Wall. 459; *Bank v. Supervisors*, 7 Wall. 26; *Bank v. Mayor of New York*, 7 Wall. 16; *Society for Savings v. Coite*, 6 Wall. 594; *Provident Institution v. Massachusetts*, *Ibid.* 611; *Hamilton Co. v. Massachusetts*, *Ibid.* 632; *Bank of Louisville v. Kentucky*, 9 Wall. 353.

3. To regulate Commerce<sup>1</sup> with foreign Nations<sup>2</sup> and among the several States<sup>3</sup> and with the Indian Tribes;<sup>4</sup>
4. To establish an uniform Rule of Naturalization;<sup>5</sup> and uniform Laws on the subject of Bankruptcies throughout the United States;<sup>6</sup>
5. To coin money<sup>7</sup> regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;<sup>8</sup>
7. To establish Post Offices and post Roads;<sup>9</sup>
8. To promote the progress of Science and useful Arts,<sup>10</sup>

MARCH 4, 1789.

To regulate commerce.

Naturalization and bankruptcies.

To coin money and fix the standard of weights and measures.

To punish counterfeiters.

Post offices and roads.

To promote the progress of science and useful arts.

1. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. *Gibbons v. Ogden*, 9 Wh. 196. Commerce with foreign nations and among the several states, can mean nothing more than intercourse with those nations, and among those states, for the purposes of trade, be the object of trade what it may; and this intercourse must include all the means by which it can be carried on, whether by the free navigation of the waters of the several states, or by a passage overland through the states, where such passage becomes necessary to the commercial intercourse between the states. *Corfield v. Coryell*, 4 W. C. C. 378; *Penn. v. Wheeling & Bel. Bridge Co.*, 18 How. 421; *Columbus Ins. Co. v. Peoria Bridge Co.*, 6 McLean, 70; *Columbus Ins. Co. v. Curtenius*, *Ibid.* 209; *Jolly v. Terre Haute Draw Bridge Co.*, *Ibid.* 237; *U. S. v. Railroad Bridge Co.*, *Ibid.* 518. This clause confers the power to impose embargoes. *Gibbons v. Ogden*, 9 Wh. 191; *U. S. v. The William*, 2 Hall L. J., 265, 272. And to punish crimes upon stranded vessels. *U. S. v. Coombs*, 12 Pet. 72. See also, *Gibbons v. Ogden*, 9 Wh. 263; *N. Y. v. Miln*, 11 Pet. 102; *Cooley v. Board of Wardens*, 12 How. 299; *Smith v. Maryland*, 18 How. 71; *Dunham v. Lamphere*, 3 Gray, 268; *Ex parte McNeill*, 13 Wall. 238; *Edwards v. Steamship Panama*, 1 Dedy, 35; S. C., 1 Or., 418.

2. A state law which requires the masters of vessels engaged in foreign commerce, to pay a certain sum to a state officer, on account of every passenger brought from a foreign country into the state, conflicts with the constitution and laws of the United States. *Smith v. Turner*, 7 How. 283; see also, *Elkison v. Delusseline*, 2 Wh. Cr. Cas. 56; 1 Opin. 659; 2 Opin. 426; *Brown v. Maryland*, 12 Wh. 419; *Nathan v. Louisiana*, 8 How. 73; *Mager v. Grima*, *Ibid.* 490; *Thurlow v. Massachusetts*, 5 How. 504; *The State v. Allmond*, 4 Am. L. R. 538; *Withers v. Buckley*, 20 How. 84. Fees to port wardens, when illegal, because a regulation of commerce. *Southern Steamship Co. v. The Port Wardens of N. O.*, 6 Wall. 31.

3. Congress has power to prevent the obstruction of any navigable river, which is a means of commerce between any two or more states. *Works v. Junction Railroad*, 5 McLean, 426; *Jolly v. Terre Haute Draw Bridge Co.*, 6 *Ibid.* 237; *Devoe v. Pennre Ferry Bridge Co.*, 3 Am. L. R., 79. Where the stream is wholly within a single state, see *Veasie v. Moor*, 14 How. 568; *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet. 251; *Silliman v. Hudson River Bridge Co.*, 2 Wall. 403; *Gilman v. Philadelphia*, 3 Wall. 703; *The Passaic Bridge*, *Ibid.* 782. Railways, as a means of carrying on commerce, are equally subject to the regulation of congress as

steamboats. *Gray v. Clinton Bridge*, 16 Am. L. R. 149.

4. Under the power to regulate commerce with the Indian tribes, congress have power to prohibit all intercourse with them, except under a license. *U. S. v. Ciana*, 1 McLean, 264. And may also prohibit the sale of liquor to an Indian, under the charge of an Indian agent, within the limits of a state. *U. S. v. Holliday*, 3 Wall. 407. But this power does not confer on the national government a general jurisdiction over an Indian territory, within the boundaries of a state. *U. S. v. Bailey*, 1 McLean, 234. An act of congress may supersede a prior treaty with an Indian tribe. *The Cherokee Tobacco*, 11 Wall. 621.

5. The power to pass naturalization laws, is exclusively in congress. *Chirac v. Chirac*, 2 Wh. 269; *U. S. v. Villato*, 2 Dall. 372; *Thurlow v. Massachusetts*, 5 How. 586; *Smith v. Turner*, 7 *Ibid.* 556; *Golden v. Prince*, 3 W. C. C. 314; *Dred Scott v. Sanford*, 19 How. 405. This power is exclusively in congress. *Golden v. Prince*, 3 W. C. C. 313. To what the power extends. *In re Klein*, 1 How. 277; *Mitchel v. Great Works M. & M. Co.*, 2 Story. 648; *In re Arnold*, 16 Am. L. R. 624; *In re Muller et al.*, 1 Dedy, 523.

6. The states have authority to pass bankrupt laws, provided they do not impair the obligation of contracts, and provided there be no act of congress in force to establish a uniform system of bankruptcy, conflicting with such laws. *Sturges v. Crowninshield*, 4 Wh. 122; *McMillan v. McNeill*, *Ibid.* 209; and see, *Farm. & Mech. Bank v. Smith*, 6 Wh. 131; *Ogden v. Saunders*, 12 Wh. 213; *Mason v. Halle*, *Ibid.* 370; *Boyle v. Zacharie*, 6 Pet. 348, 635; *Beers v. Houghton*, 9 *Ibid.* 329; *Cook v. Moffat*, 5 How. 295.

7. Congress has power to give to treasury notes the character and qualities of money. *Legal Tender Cases*, 12 Wall. 529.

8. The power to punish the crime of passing counterfeit money, is possessed by the states. *Fox v. Ohio*, 5 How. 410. Congress may provide for punishing the crime of bringing into the United States false, forged and counterfeit coins, made in the similitude of coins of the United States, and also for the crime of uttering and passing the same. *U. S. v. Marigold*, 9 How. 560.

9. It is under this power that congress has adopted the mail regulations of the Union, and punish all depredations on the mail. *Sturtevant v. City of Alton*, 3 McLean, 393. As to the power to establish post roads, see, *Penn. v. Wheeling & Belmont Bridge Co.*, 18 How. 421.

10. Patents are entitled to a liberal construction, since they are not granted as restrictions upon the rights of the community, "but to promote the progress of science and the useful arts." *Blanchard v.*



MARCH 4, 1789. by securing for limited Times to Authors' and Inventors the exclusive Right to their respective Writings and Discoveries;

Inferior tribunals. 9. To constitute tribunals inferior<sup>2</sup> to the supreme Court;<sup>3</sup>  
Crimes on the high seas and against the law of nations. 10. To define and punish Piracies<sup>4</sup> and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare war. Letters of Marque and capture. 11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support armies. 12. To raise and support Armies,<sup>5</sup> but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a navy 13. To provide and maintain a Navy.

Government of the army and navy. 14. To make Rules<sup>6</sup> for the Government and Regulation of the land and naval Forces.

Sprague, 3 Sumn. 535; Grant v. Raymond, 6 Pet. 218; Hogg v. Emerson, 6 How. 436; Brooks v. Fluke, 15 Ibid. 223. The power of congress upon the subject of patents is plenary by the terms of the constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify their legislation at their pleasure, so that they do not take away the rights of property in existing patents. *McClurg v. Kingsland*, 1 Ibid. 206. Therefore congress has the power to grant the extension of a patent, which has been renewed under the act of 1836. *Bloomer v. Stolley*, 5 McLean, 158. Their power to reserve rights and privileges to assignees, on extending the terms of a patent, is incidental to the general power conferred by the constitution. *Blanchard Gun Stock Turning Fac. v. Warner*, 1 Blatch. 258. Congress is not empowered to pass laws for the benefit of authors and inventors, except as a means of promoting the progress of "*science and the useful arts*." *Martinetti v. Maguire*, 1 Dedy, 223. It cannot grant the exclusive right to exhibit an immoral spectacle. *Ibid.* 222.

1. In the United States, an author has no exclusive property in a published work, except under some act of congress. *Wheaton v. Peters*, 8 Pet. 591, and see *Dudley v. Mayhew*, 3 Comst. 9.

2. See *American Ins. Co. v. Canter*, 1 Pet. 546.

3. The crime of piracy is defined by the law of nations with reasonable certainty. *U. S. v. Smith*, 5 Wh. 153. For definition of a pirate, see, *U. S. v. Baker*, 6 Bl. C. C. 6.

4. As a consequence of the power of declaring war and making treaties, the government possesses the power of acquiring territory either by conquest or treaty. *American Ins. Co. v. Canter*, 1 Pet. 542. When the legislative authority has declared war, the executive authority to whom its execution is confided, is bound to carry it into effect; he has a discretion vested in him as to the manner and extent; but he cannot lawfully transcend the rules of warfare established among civilized nations. *Brown v. U. S.*, 8 Cr. 153. The United States, under the present constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory and govern it as such, until in the judgment of congress, it has sufficient population to entitle it to be admitted as a State of the Union. *Dred Scott v. Sanford*, 19

How. 447. A state of actual war may exist without any formal declaration of it by either party; and this is true both of a civil and foreign war. A civil war exists whenever the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that courts cannot be kept open, and may be prosecuted on the same footing as if those opposing the government were foreign invaders. *Prize Cases*, 2 Black. 635. The effect of war upon the citizens of the hostile nations. *The William Bagley*, 5 Wall. 337. The President can recognize a state of war as actually existing, and the courts are bound by such recognition. *Semmes v. City Fire Insurance Co.*, 6 Bl. C. C. 445. Congress can determine what property of public enemies shall be confiscated. *U. S. v. Miller*, 11 Wall. 229. It may carry on a civil war as well as a foreign one. *Tyler v. Defree*, *Ibid.* 331. Authority to suppress rebellion, is found in that to suppress insurrection and carry on war. *Texas v. White*, 7 Wall. 700.

5. Congress has a constitutional power to enlist minors in the army or navy of the United States, without the consent of their parents. *U. S. v. Bainbridge*, 1 Mass. 71; *Case of Emmanuel Roberts*, 2 Hall's L. J., 172; *U. S. v. Stewart*, Crabbe, 265; *Commonwealth v. Murray*, 4 Penn. 487. *Ex parte Brown*, 5 Cr. C. C. 554. Public policy requires that a minor shall be at liberty to enter into a contract to serve the State, whenever such contract is not positively forbidden by the State itself. *Commonwealth v. Gamble*, 11 S. & E. 94; *The King v. Rutherford Greys*, 1 Barn. & Cress. 345. Under the authority "to raise and support armies," congress has power to bestow bounties and pensions upon those who may engage in the military service of the United States. *U. S. v. Fairchild*, 1 Ab. 75. Under act of 1862, the oath of a recruit as to his age, is conclusive. *Ex parte Cline*, 1 Ben. 338; *Ex parte Stokes*, *Ibid.* 341; *Ex parte Riley*, *Ibid.* 408. The validity of an enlistment into the military service of the United States, may be enquired into on habeas corpus. 1 Dillon, 587.

6. The army regulations made pursuant to authority of congress, have the force of law. *Gratiot v. The United States*, 4 How. 80. The duties and powers of military officers are regulated by law, and are for the courts to determine. *U. S. v. Willard*, 1 Pa. 539. Punishment of officers in the navy. 20 How. 165. Trial of civilian by military

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;<sup>1a</sup>

MARCH 4, 1789.  
Calling forth  
the militia.

16. To provide for organizing, arming and disciplining the Militia, and for governing such part of them as may be employed in the Service of the United States,<sup>2</sup> reserving to the States, respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To provide for  
the organization  
&c., of the  
militia.

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States,<sup>3</sup> and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;<sup>4</sup>—  
and

Exclusive legis-  
lation over seat  
of government  
of U. S.

Exclusive au-  
thority over  
places pur-  
chased for forts,  
&c.

18. To make all laws which shall be necessary<sup>5</sup> and proper for carrying into Execution the forgoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

To make all  
necessary laws.

commission. *Ex parte Milligan*, 4 Wall. 3; *Ex parte Egan*, 5 Bl. C. C. 319. A military officer is not responsible for an act done in obedience to the command of his superior, not illegal on its face; 1 *Deady*, 244.

1. The act of 1795, which confers power on the president to call forth the militia in certain exigencies, is constitutional, and the president is the exclusive and final judge whether the exigency has arisen. *Martin v. Mott*, 12 Wh. 19.

2. The militia of the several states are not subject to martial law, unless they are in the actual service of the United States. *Mills v. Martin*, 19 Johns. 7. Militiamen are not considered in the service of the United States, until actually mustered in, at the place of rendezvous. *Houston v. Moore*, 5 Wh. 1; *Ex Parte Inons*, 5 Bl. C. C. 166. So far as congress has provided for organizing the militia, the legislative powers of the states are excluded. *Houston v. Moore*, 5 Wh. 20. Resistance to enrollment and draft, under acts of 1863 and 1864, see. U. S. v. Scott, 3 Wall. 642; U. S. v. Murphy, *Ibid*. 649.

3. This includes the power of taxation. *Loughborough v. Blake*, 5 Wh. 317. The power of congress over the District of Columbia, is limited by the provisions of the constitution. U. S. v. Moore; 1 Cr. 360 n.

4. The right of exclusive legislation, carries with it the right of exclusive jurisdiction. U. S. v. Cornell, 2 Mas. 60, 91; 6 Opin. 577; U. S. v. Donlan, 5 Bl. C. C. 284; U. S. v. Barney, *Ibid*. 294; U. S. v. Stahl, *McCahon*. 206. But the purchase of lands by the United States for public purposes, within the limits of a state, does not of itself oust the jurisdiction of such state, over the lands so purchased. U. S. v. Cornell, 2 Mas. 60. The constitution prescribes the only manner in which the

United States can acquire lands as a sovereign power, and they only hold as an individual when they obtain it otherwise. *Commonwealth v. Young* Brightly, 302; *People v. Godfrey*, 17 Johns. 225; U. S. v. Traver, 2 Wh. Cr. Cas. 490; *People v. Lent*, *Ibid*. 648. Whether the states have the right to tax the lands purchased by the United States, for public purposes, although purchased without the consent of the state. See, U. S. v. Weise, 2 Wall. Jr. 72: 7 Opin. 628.

5. This does not mean absolutely necessary, nor does it imply the use of only the most direct and simple means calculated to produce the end. *Commonwealth v. Lewis*, 6 Binn. 280-1; *McCullough v. Maryland*, 4 Wh. 413; U. S. v. Fisher, 2 Cr. 368. *Hepburn v. Griswold*, 8 Wall. 603; *Legal Tender Cases*. 12 Wall. 457. And therefore congress had power to charter the bank of the United States, as a necessary and useful instrument of the fiscal operations of the government. *Ibid*. 316, 422. So, also, it has power, under this general authority, to provide for the punishment of any offences which interfere with, obstruct, or prevent commerce or navigation with foreign states, and among the several states, although such offences may be committed on land. U. S. v. Combs, 12 Pet. 78. Congress having the undisputed power to provide a paper currency for the whole country, may therefore restrain the circulation of any notes not issued under its own authority. *Veazie Bank v. Fenno*, 8 Wall. 533. Congress having the power to suspend the writ of *habeas corpus* in case of rebellion or invasion, may therefore pass laws for the protection or indemnity of persons engaged in making arrests without legal warrant or cause in pursuance of an act authorizing such suspension. *McCall v. McDowell*, 1 *Deady*, 244.

MARCH 4, 1789.

Migration or importation of persons.

Writ of habeas corpus, when may be suspended.

Bills of attainder and ex post facto laws.

Capitation or other direct tax, how laid.

No tax or duty on articles from any State.

No preference to ports of one State.

No money to be drawn from the treasury, but by law.

No title of nobility to be granted; and no U. S. officer to accept present from foreign power.

SEC. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

2. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.<sup>1</sup>

3. No Bill of Attainder or ex post facto Law shall be passed.<sup>2</sup>

4. No Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.<sup>3</sup>

5. No Tax or Duty shall be laid on Articles exported from any State.

6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.<sup>4</sup>

7. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law;<sup>5</sup> and a regular Statement and Account of the Receipts and Expenditure of all public Money shall be published from time to time.

8. No title of Nobility shall be granted by the United States; And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, ac-

1. The president has no power to suspend the privilege of the writ of habeas corpus, except as authorized and directed by congress. *Ex parte Merryman*, Taney's C. C. 253; *McCall v. McDowell*, 1 Deady, 259. Congress is the exclusive judge of "when in cases of rebellion or invasion," the public service requires the suspension of "the privilege of the writ;" and in such case it may suspend it generally, or in particular cases, and it may suspend it directly or commit the matter to the judgment of the president, within the proper limits. *McCall v. McDowell*, 1 Deady, 249. The national courts and judges have the power to apply the writ of habeas corpus to all cases which it would reach at common law, provided it is not issued to any person in jail, unless confined under, or by color of the authority of the United States. *Ex parte Des Rochers*, 1 McAllister, 68. It is essential to the safety of every government that, in a great crisis, there should be a power somewhere of suspending the writ of habeas corpus. *Ex parte Milligan*, 4 Wall. 125.

2. Ex post facto laws are such as create or aggravate crime, or increase the punishment, or change the rules of evidence for the purposes of conviction. *Calder v. Bull*, 3 Dall. 390. The phrase only applies to penal and criminal laws, which inflict forfeitures or punishments, and not to civil proceedings which affect private rights

retrospectively. *Watson v. Mercer*, 8 Pet. 110; *Carpenter v. Penn.*, 17 How. 463; *Fletcher v. Peck*, 6 Cr. 138. There is nothing in the constitution which forbids congress to pass laws violating the obligation of contracts, though such a power is denied to the states. *Evans v. Eaton*, Pet. C. C. 323. An act of congress requiring attorneys to order to continue in the exercise of their profession, to subscribe a test oath as to past conduct, is in the nature of a bill of pains and penalties, and therefore unconstitutional. *Ex parte Garland*, 4 Wall. 333.

3. *Hylton v. U. S.*, 3 Dall. 171; *Loughborough v. Blake*, 5 Wh. 320-1.

4. A state law requiring the payment of pilotage fees, does not infringe this clause. *Cooley v. Board of Wardens*, 12 How. 814-15. See *Penn. v. Wheeling & Belmont Bridge Co.*, 18 How. 421; *Pacific M. S. Co. v. Joliffe*, 2 Wall. 450.

5. Whether the public moneys at the disposal of the postmaster-general are technically in the treasury or not, the spirit of this provision applies to them, and ought to be faithfully observed in their expenditure. 3 Opin. 13. No other remedy exists for a creditor of the government; he cannot have a lien on the public property, in his possession. *U. S. v. Barney*, 3 Hall, L. J. 139; 2 Wh. Cr. Oss. 513.

cept of any present, Emolument, Office,<sup>1</sup> or Title of any kind MARCH 4, 1789. whatever, from any King, Prince, or foreign State.

SEC. 10. No State shall enter into any Treaty, Alliance Limitation of the powers of the States. or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit;<sup>2</sup> make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,<sup>3</sup> or Law impairing the Obligation of Contracts,<sup>4</sup> or grant any title of Nobility.

2. No state shall, without the consent of the Congress, Same subject. lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws;<sup>5</sup> and the net Produce of all Duties and Imposts,

1. Thus, a marshal of the United States cannot at the same time hold the office of commercial agent of France. 6 Opin. 409.

2. As to what constitutes a bill of credit, see *Brisco v. Bank of Kentucky*, 11 Pet. 257; *Craig v. Missouri*, 4 Pet. 410; *S. C. 8 Pet. 40*; *Darrington v. Bank of Alabama*, 13 How. 12; *Woodruff v. Trapnall*, 11 How. 205; *Curran v. Arkansas*, 16 Pet. 317. Treasury notes issued as currency, are engagements to pay in coined money of the United States. *Bank v. Supervisors*, 7 Wall. 26. Right of congress to issue bills of credit, established by practice and decisions. *Veazie Bank v. Fenno*, 8 Wall. 533. 548. Congress has power to make notes of the United States, a legal tender in payment of all debts, public or private. *The Legal Tender Cases*, 457.

3. The constitution does not prohibit the States from passing retrospective laws generally, but only ex post facto laws. *Watson v. Mercer*, 8 Pet. 110. Retrospective laws divesting vested rights are impolitic and unjust; but they are not ex post facto laws within the meaning of the constitution, nor repugnant to its provisions. *Albee v. May*, 2 Paine, 74; unless they impair the obligation of a contract. *Baltimore and Susquehanna Railroad Co. v. Nesbit*, 10 How. 401. Should a statute declare, that contracts founded upon immoral or illegal considerations, whether made or to be made, should be valid and binding, such a statute although retrospective, would not be repugnant to the constitution of the United States. *Satterlee v. Matthewson*, 2 Pet. 412. Under the form of creating a qualification, or attaching a condition, the States cannot, in effect, inflict a punishment for a past act, which was not punishable at the time it was committed. *Cummings v. Missouri*, 4 Wall. 277. A statute which authorizes the imposition of a tax, according to a previous assessment, is not retrospective. *Zoeck v. New Orleans*, 4 Wall. 172. A State law, changing the place of trial from one county to another, in the same district, is not an ex post facto law. *Gut v. Minnesota*, 9 Wall. 35. The constitution of a State is a "law," within the meaning of this prohibition. *Railway Co. v. McClure*, 10 Wall. 511.

4. This provision has never been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. *Dartmouth college v. Woodward*, 4 Wh. 629. A private charter is such a contract. *Ibid.* 518. An act incorporating a banking institution. *Providence Bank v. Billings*, 4 Pet. 514; *Gordon v. Appeal tax court*, 3 How. 133; *Planters' Bank v. Sharp*, *Ibid.* 301; *Curran v. Arkansas*, 16 *Ibid.* 304. A grant of land by the legislature of a State. *Fletcher*

*v. Peck*, 6 Cr. 87; *Terret v. Taylor*, 9 *Ibid.* 43; And so is a compact between two States. *Green v. Biddle*, 8 Wh. 1; *Allen v. McKean*, 1 Sumn. 276; 2 Pars. Con. 400. An appointment to a salaried office is not a contract within the meaning of the constitution. *Butler v. Penn.*, 10 How. 402. All contracts are subject to the right of eminent domain existing in the several States, and the exercise of this power does not conflict with the constitution. *West River Bridge Co. v. Dix*, 6 How. 507; *Rundle v. Delaware & Raritan Canal Co.*, 14 How. 80. Nor does the exercise of the power of taxation. *Providence Bank v. Billings*, 4 Pet. 514. So the States may pass limitation acts. *Jackson v. Lamphire*, 3 Pet. 289; *Hawkins v. Barney's lessee*, 5 Pet. 457; *Bronson v. Kinsie*, 1 How. 315; *Phalon v. Virginia*, 8 How. 168. Exemption laws. *Bronson v. Kinsie*, 1 How. 315. Insolvent laws discharging the person of a debtor from imprisonment. *Mason v. Haile*, 12 Wh. 370; *Beirs v. Haughton*, 9 Pet. 329. Recording acts, postponing elder to a younger title, after a limited period. *Jackson v. Lamphire*, 3 Pet. 329. And laws relating to divorces. *Dartmouth College v. Woodward*, 4 Wh. 629. Whatever belongs merely to the remedy, may be altered according to the will of the State, provided the alteration do not impair the obligation of the contract; but if that effect be produced, it is immaterial whether it be done by acting on the remedy, or directly on the contract itself. *Bronson v. Kinsie*, 1 How. 315. The extent of change is not material, any postponement or acceleration of the performance of the contract, impairs its obligation. *Green v. Biddle*, 8 Wh. 175; *McCracken v. Hayward*, 2 How. 608. This clause does not affect the laws of Texas, passed before its admission into the Union. *League v. DeYoung*, 11 How. 185. A State Legislature may, by contract, surrender the right of taxation, as to the property of a corporation. *State Bank of Ohio v. Knoop*, 16 How. 369; *McGee v. Mathis*, 4 Wall. 143; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Washington University v. Rouse*, *Ibid.* 39; *Wilmington Railway v. Ried*, 264. Law commuting taxes, when a contract. *Chicago v. Sheldon*, 9 Wall. 50. A law does not necessarily impair the obligation of a contract, because it may effect it retrospectively, or because it enhances the difficulty, or diminishes the value of performance, provided it leaves the obligation of performance in full force. *Curtis v. Whitney*, 13 Wall. 68. A law modifying the remedy, which in any way impairs substantial rights, is within the prohibition, and so far void. *White v. Hart*, *Ibid.* 646. An Act which gives an additional remedy to the holder of a contract, does not impair its obligation. *Gordon v. S. F. Canal Co.*, 1 *McAllister*, 520.

5. A State law imposing a license tax on insur-

MARCH 4, 1789. laid by any state on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

3. No State shall, without the Consent of Congress, lay any Duty of Tonnage,<sup>1</sup> keep Troops or Ships of War in time of Peace, enter into any Agreement or Compact<sup>2</sup> with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

## ARTICLE II.

Executive power of President.  
Duration of office.

SECTION 1. 'The executive Power shall be vested in a President of the United States of America.<sup>3</sup> He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows:

Electors of President and Vice President.

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Suspended and annulled by the 12th amendment.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having

ance companies incorporated by other States, is not unconstitutional. *Paul v. Virginia*, 8 Wall. 168.

1. A State cannot impose a tax upon vessels licensed and enrolled under the laws of the United States, at so much per ton of the registered tonnage. *State Tonnage Cases*, 12 Wall. 204.

2. These words are used in their broadest sense; they were intended to cut off all negotiation and intercourse between the state authorities and foreign nations. *Holmes v. Jennison*, 14 Pet. 572, 574. No state can, without the consent of congress, enter into any agreement or compact, to deliver up fugitives from justice from a foreign state, who may be found within its limits. *Ibid.* 3 Opin. 661. This prohibition is political in its character, and has no reference to a mere matter of contract, or the grant of a franchise, which in no wise conflicts with the powers delegated to the general government. *Union Branch Railroad Co. v. East Tennessee and Georgia Railroad Co.*, 14 Geo. 320. A compact entered into between two states, with the assent of congress, is binding on those states, and the citizens thereof. *Fluger v. Pool*, 1 McLean, 186; 8 C. 11 Pet. 186. A compact between two

states, with the assent of congress, is a contract, the obligation of which is protected by the constitution. *Green v. Biddle*, 8 Wh. 1. The consent of congress to a compact between two states, need not be express,—it may be inferred from legislation. *Virginia v. West Virginia*, 11 Wall. 39.

3. An act done by one president, vesting a right in another person, is not subject to review or reversal by his successor. 6 Opin. 603. The president cannot control a statute, nor dispense with its execution. *Kendall v. U. S.*, 12 Pet. 523. Nor authorize a secretary to omit the performance of an act enjoined by law. *Marbury v. Madison*, 1 Cr. 137. Nor suspend the writ of habeas corpus, without authority from congress. *McCall v. McDowell*, 1 Deady 259. The president cannot remove a person from office without the consent of the senate. *U. S. v. Avery*, *Ibid.* 204. The power conferred upon the president to grant pardons, is unlimited, except in cases of impeachment, and not subject to legislative control. *Ex parte Garland*, 4 Wall. 334.

the greatest number of Votes shall be the President, if such number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no person have a Majority, then from the five highest on the List, the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote: A Quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]<sup>MARCH 4, 1789.</sup>

3. The Congress may determine the Time of chusing the Electors,<sup>2</sup> and the Day on which they shall give their Votes;<sup>3</sup> which Day shall be the same throughout the United States.

4. No Person, except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

5. In case of the removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

6. The President shall at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

7. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect and defend the Constitution of the United States."

1. This clause is annulled and superseded by the 12th amendment.

2. On the Tuesday next following the first Monday in November; by act January 23, 1845. 5 Stat. 721.

3. On the first Wednesday of December; by act March 1, 1792.

MARCH 4, 1789.

Powers and duties of the President

May grant pardons and reprieves.

May make treaties.

Appointments to office.

SEC. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States;<sup>1</sup> he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons<sup>2</sup> for Offences against the United States, except in Cases of Impeachment.

2. He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties,<sup>3</sup> provided two-thirds of the Senators present concur; and he shall nominate,<sup>4</sup> and by and with the Advice and Consent of the Senate,<sup>5</sup> shall appoint<sup>6</sup> Ambassadors, other public Ministers<sup>7</sup> and Consuls, Judges of the Supreme Court, and all other Officers of the

1. The president is not obliged personally to take command of the militia. He may place them under the command of officers of the army of the United States. 2 Opin. 711, 712; 2 Story's Com., § 1,490-2.

2. He may pardon as well before trial and conviction, as afterwards. 6 Opin. 20. And after the expiration of the imprisonment, which forms a part of the sentence. Stetler's case, Phila. R. 302. He may grant a conditional pardon. Ex parte Wells, 18 How. 307; 1 Opin. 341. Provided the condition be compatible with the genius of our constitution and laws. Ibid. 482. Where the condition is such, that the government has no power to carry it into effect, the pardon will be in effect unconditional. 5 Opin. 368; Flavell's case, S. W. & S. 197; U. S. v. Wilson, 7 Pet. 161; People v. Potter, 1 Parker, G. R. 47. The pardoning power includes that of remitting fines, penalties and forfeitures, under the revenue laws. U. S. v. Morris, 10 Wh. 246; McLane v. U. S., 6 Pet. 404; 2 Opin. 329; the passenger laws, 6 Opin. 393; the laws prohibiting the slave trade, 4 Opin. 573; fines imposed on defaulting jurors, 3 Opin. 317; 4 Ibid. 458; for a contempt of court, 3 Opin. 622, and in criminal cases, 3 Ibid. 418. But the president has no power to remit the forfeiture of a bail bond. 4 Opin. 144. Nor, it seems, can he, by a pardon, defeat a legal interest or right, which has become vested in a private citizen; as for example, the vested right of an officer making a seizure. U. S. v. Lancaster, 4 W. C. C. 64; 4 Opin. 576; 6 Opin. 615; 6 Opin. 532, 570; U. S. v. Harris, 9 In. Rev. Rec. 21; The Magaretta, 2 Gall. 515. The grant of the pardoning power neither requires nor authorizes the president to re-examine the case upon new facts; nor to grant a pardon upon the assumption of the new facts alleged. To do either, would be an abuse of that power. 1 Opin. 359. A pardon is a private, though official act; it must be delivered to and accepted by the criminal and cannot be noticed by the court, unless brought before it judicially, by plea, motion or otherwise. U. S. v. Wilson, 7 Pet. 150. The president alone can pardon offences committed in a territory in violation of acts of congress. 7 Opin. 561. He has power to order a nolle prosequi in any stage of a criminal proceeding in the name of the United States. 5 Opin. 729. The power of the president to grant pardons is unlimited, except in cases of impeachment, and not subject to legislative con-

trol. Ex parte Garland, 4 Wall. 334. A pardon granted upon condition, blots out the offence if proof is made of compliance with the condition. U. S. v. Klein, 13 Wall. 128.

3. The stipulations of a treaty are paramount to the provisions of a state constitution. Gordon v. Kerr, 1 W. C. C. 322. Congress may supersede by statute, a prior treaty. The Cherokee Tobacco, Wall. 616. Congress has no constitutional power to settle the rights under treaties, except in cases purely political; when a case arises between individuals, under a treaty, the construction of it is the peculiar province of the judiciary. Wilson v. Wall, 6 Wall. 89.

4. The nomination and appointment are voluntary acts; and distinct from the commissioning. Marbury v. Madison, 1 Cr. 155-6. Even after confirmation, the president may, in his discretion, withhold a commission; and until a commission has been signed, the appointment is not fully consummated. 4 Opin. 218.

5. The senate cannot originate an appointment; its constitutional action is confined to a simple affirmation or rejection of the president's nominations; and such nominations fail whenever it disagrees to them. 3 Opin. 188.

6. The power of the president to appoint to office, necessarily includes the power of removal, where the constitution has not otherwise provided. He may remove a territorial judge. 5 Opin. 288; 3 Opin. 673; 4 Opin. 603, 608-9; 4 Elliott's Debates, 350. Ex parte Hennen, 13 Pet. 259. But as to the power of removal where the tenure is fixed by congress, see United States v. Guthrie, 17 How. 294. He may cause a military officer to be stricken from the rolls, without a trial by court-martial, notwithstanding a decision in his favor by a court of inquiry. 4 Opin. 1. See 2 Story's Com. § 538. An appointment, confirmed by the senate, is complete, when the commission is signed and sealed. U. S. v. LeBaron, 19 How., 73. The president cannot make a removal without the consent of the senate or in pursuance of authority conferred by congress. U. S. v. Avery, 1 Deady, 204.

7. This gives him power to appoint diplomatic agent of any rank, at any place or time, in his discretion, subject to the approbation of the senate, and this power cannot be limited by act of congress. 7 Opin. 186.

United States, whose appointments are not herein otherwise provided for, and which shall be established by Law;<sup>1</sup> but the Congress may by Law vest the Appointment of such inferior Officers,<sup>2</sup> as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

MARCH 4, 1789.  
Appointment of  
inferior officers

3. The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate,<sup>3</sup> by granting Commissions, which shall expire at the End of their next Session.<sup>4</sup>

Vacancies.

SEC. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed,<sup>5</sup> and shall Commission all the officers of the United States.

Give Congress  
information of  
the state of the  
Union.

Convene Con-  
gress on extra-  
ordinary occa-  
sions.

Other powers  
and duties.

SEC. 4. The President, Vice President and all civil Officers<sup>6</sup> of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.<sup>7</sup>

Civil officers,  
when removable  
from office.

### ARTICLE III.

SECTION 1. The judicial Power of the United States<sup>8</sup> shall be vested in one supreme Court, and in such inferior

Judicial Power  
of the U. S.  
where vested.

1. The effect of this and other clauses in the constitution on the subject of appointments to office, is to declare that all offices under the federal government, except where the constitution may otherwise provide, shall be established by law. U. S. v. Maurice, 2 Brock. 96.

2. Clerks of courts are such officers; and in such cases the power of removal is incident to the power of appointment. Ex parte Hennen, 13 Pet. 230, 259.

3. He may fill, during a recess of the senate, a vacancy that occurred by expiration of a commission during a previous session. 1 Opin. 631. So he may fill a vacancy which has occurred by the expiration of a former temporary appointment, the senate having neglected to act on a nomination to fill the office. 3 Opin. 673. 4 Opin. 523. 2 Opin. 525. See, 4 Opin. 361.

4. The commission of an officer appointed during a recess, who is afterwards nominated and rejected, is not thereby determined; it continues in force to the end of the next session, unless sooner determined by the president. 2 Opin. 366; 4 Opin. 30.

5. As incident to this power he has authority to appoint agents to make investigations required by acts of congress, but cannot pay them, without an

appropriation. 4 Opin. 248. It is not, in general, judicious for him, in the exercise of this power, to interfere with the functions of subordinate officers, further than to remove them for any neglect or abuse of their official trust. 2 Opin. 248. But where combinations exist among the citizens of one of the states to obstruct the acts of congress, and the question of the constitutionality of such laws is made in suits against the marshal of the United States, the president is justified in assuming his defence on behalf of the United States. 6 Opin. 220, 500.

6. A senator or representative in congress, is not such a civil officer. Blount's Trial, 22, 102, Whart. St. Tr., 260, 316; 1 Story's Com., §§ 793, 802. Nor is a territorial judge, not being a constitutional, but a legislative officer. 3 Opin. 409.

7. No previous statute is necessary to authorize an impeachment for any official misconduct. What are and what are not, high crimes and misdemeanors, is to be ascertained by a recurrence to the rules of the common law. 1 Story's Com. § 790. For the rules of proceedings prescribed in cases of impeachment, see Peck's trial, 56-9.

8. The jurisdiction of the courts of the United States, depends exclusively on the constitution and laws of the United States. Livingston v. Jef-



# 18 CONSTITUTION OF THE UNITED STATES.

**MARCH 4, 1789.** Courts as the Congress may from time to time ordain and establish.<sup>1</sup> The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior,<sup>2</sup> and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in office.<sup>3</sup>

**Compensation.** **SEC. 2** The judicial Power shall extend to all Cases,<sup>4</sup> in Law<sup>5</sup> and Equity,<sup>6</sup> arising<sup>7</sup> under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting<sup>8</sup> Ambassadors, other public Ministers, and Consuls;<sup>9</sup>—to all Cases of Admiralty and maritime Jurisdiction;<sup>10</sup> to Controversies

erson, 1 Brock. 203; American Ins. Co. v. Canter, 4 Pet. 511; 1 Curt. Comm. § 4; U. S. v. Denner, Hemp. 320; U. S. v. Alberty, Ibid. 414. Questions in their nature political, or which are by the constitution and laws submitted to the legislative or executive departments, are not subjects of judicial cognizance. Marbury v. Madison, 1 Cr. 166, 170; Geiston v. Hoyt, 3 Wh. 247; Tuther v. Borden, 7 How. 1; U. S. v. Holliday, 3 Wall. 407; Georgia v. Stanton, 6 Wall. 50; U. S. v. Baker, 5 Bl. C. C. 6; U. S. v. The Hornet, 2 C. L. N. 89; U. S. v. Avery, 1 Deady, 214. Although a state cannot confer jurisdiction on a national court, it may give a right, to which, other things allowing, such a court may give effect. Clark v. Smith, 13 Pet. 203; Fich v. Creighton, 24 How. 163; Ex parte McNeil, 13 Wall. 243; Sheldon v. Sell, 8 How. 441. The courts of the United States are courts of limited, but not inferior jurisdiction; their judgments are conclusive between the parties, until reversed, although the jurisdiction do not appear on the record. McCormick v. Sullivant, 10 Wh. 192; Ex parte Watkins, 3 Pet. 193; Kennedy v. Georgia State Bank, 8 How. 586.

1. Congress having the power to establish inferior courts, must, as a necessary consequence, have the right to define their respective jurisdictions. Sheldon v. Sell, 8 How. 448-9; Osborne v. U. S. Bank, Wh. 738. It is not in the power of congress to assign to the judiciary any but judicial duties. Hayburn's case, 2 Dall. 410, note; U. S. v. Todd, 13 How. 62.

2. Courts in which the judges hold their offices for a specified number of years are not constitutional courts, in which the judicial powers conferred by the constitution can be deposited. Am. Ins. Co. v. Canter, 1 Pet. 511, 546. The territorial courts are not United States district courts, though invested with federal jurisdiction. U. S. v. Gilson, 2 C. L. N. 98. They are legislative, not constitutional courts, and their jurisdiction and practice are regulated by congress, or the territorial legislature. Lacy v. Abbott, 1 Am. L. T. Rep. 84; Clinton et al. v. Englebrecht, 13 Wall. 434.

3. This prohibits the imposition of a tax upon a judge's salary. Commonwealth v. Mann, 5 W. & S. 415; 2 Story's Com. § 1,053a.

4. A "case" arises, within the meaning of the constitution, whenever any question respecting the constitution, laws or treaties of the United States, has assumed such a form, that the judicial power is capable of acting on it. Osborne v. U. S. Bank, 9 Wh. 819. Whenever a general rule as to property or personal rights, or injuries to either, is established by state legislation, its enforcement by a national court in a case between proper parties is a matter of course, and the jurisdiction of

the court in such cases, is not subject to state limitations. Railway Co. v. Whitton, 13 Wall. 286. The judiciary is a coordinate branch of the government, and may declare a statute to be void, as repugnant to the constitution. Van Horn's Lessee v. Dorrance, 2 Dall. 308; Calder v. Bull, 3 Dall. 399; Dartmouth College v. Woodward, 4 Wh. 625; Darby v. Wright, 3 Bl. C. C. 170; U. S. v. Klein, 13 Wall. 143.

5. By "cases in law" are to be understood, suits in which legal rights are to be ascertained and determined, in contradistinction to those where equitable rights are recognized, and equitable remedies administered; or where the proceeding is in the admiralty. Persons v. Bedford, 3 Pet. 447; Robinson v. Campbell, 3 Wh. 212.

6. By "Cases in Equity" are to be understood suits in which relief is sought, according to the principles and practices of the equity jurisdiction as established in English jurisprudence. Robinson v. Campbell, 3 Wh. 222-3; United States v. Howland, 4 Wh. 108; Lorman v. Clark, 2 McLean, 570; Lanman v. Clark, 4 McLean, 18; Gordon v. Hobart, 2 Summ. 401; Pratt v. Northam, 5 Mas., 95; Cropper v. Coburn, 2 Curt. C. C., 465.

7. A "case" is said to arise under the constitution or a law of the United States, whenever its correct decision depends on the construction of either. Cohens v. Virginia, 6 Wh. 379. A bill in equity to enforce specific performance of a contract to convey a patent, is not "a case arising under the laws of the United States," as to patents, so as alone to give jurisdiction to its courts. Nesmith v. Calvert, 1 W. & M., 34.

8. The federal courts have jurisdiction of all suits "affecting" public ministers, although they may not be parties to the record. Osborne v. U. S. Bank, 9 Wh. 854; U. S. v. Ortega, 11 Wh. 467. U. S. v. Ravera, 2 Dall. 297.

9. The recognition of the executive of the United States is conclusive as to the public character of the party. Dupont v. Pichon, 4 Dall. 321; U. S. v. Ortega, 4 W. C. C. 531.

10. This embraces what was known and understood in the United States, as the admiralty and maritime jurisdiction, at the time when the constitution was adopted. Genesee Chief v. Fitzhugh, 12 How. 443; N. Jersey Steam Nav. Co. v. Merchants Bank, 6 How. 344; Waring v. Clark, 5 How. 441. The jurisdiction of the admiralty courts in this country, at the time of the revolution, and for a century before, was more extensive than that of the high court of admiralty in England. Ibid. This jurisdiction extends to the navigable rivers and lakes of the United States, without regard to the ebb and flow of the tides of the ocean. Genesee Chief v. Fitzhugh, 12 How. 443. It embraces

to which the United States shall be a party;—<sup>1</sup> to Controversies between two or more States;<sup>2</sup> between a State and Citizens of another State;<sup>3</sup>—between Citizens of different States;<sup>4</sup> between Citizens of the same State claiming Lands

MARCH 4, 1789.

all maritime contracts, wheresoever the same may be made or executed, and whatever may be the form of the stipulations; and all torts and injuries committed upon waters within its jurisdiction. *De Lovio v. Boit*, 2 Gall. 398; *Gloucester Ins. Co. v. Younger*, 2 Curt. C. C. 322. Crimes and offences against the laws of the United States. *Corfield v. Coryell*, 4 W. C. C. 371; *U. S. v. Berans*, 3 Wh. 396. Cases of seizure for breach of the revenue laws, and those made in the exercise of the rights of war. *The Vengeance*, 3 Dall. 297; *The Sally*, 2 Cr. 406; *The Betsy*, 4 Cr. 443; *The Samuel*, 1 Wh. 9; *The Octavio*, 1 Wh. 20. Another class of cases by which jurisdiction has always been exercised in the admiralty courts in this country, though denied in England, are suits by ship carpenters, and material men, for repairs and necessaries made and furnished to ships, whether foreign or in the port of the State to which they do not belong, or in the home port; if the municipal law of the State gives a lien for the same. *Gardner v. The N. Jersey*, 1 Pet. Adm. 227; *Stevens v. The Sandwich*, *Ibid.* 233n; *Lane v. The Brig President*, 4 W. C. C. 453; *The Ship Robert Fulton*, *Paine*, 620; *Davis v. A New Brig, Gilt*, 47; *The General Smith*, 4 Wh. 438; *The St. Jago de Cuba*, 9 Wh. 449; *Peyroux v. Howard*, 7 Pet. 324; *N. Jersey Steam Nav. Co. v. Merchants' Bank*, 6 How. 390; *Wick v. The Samuel Strong*, 6 McLean, 590. The admiralty jurisdiction is not limited to tide waters, but extends to all the lakes and navigable waters of the United States. *The Eagle*, 8 Wall. 15. Liens for repairs and supplies, when enforced in admiralty. *The Grapeshot*, 8 Wall. 129; *The Guy*, *Ibid.* 158; *The Lulu*, 10 Wall. 197; *The Kalamazoo*, *Ibid.* 208; *The Custer*, *Ibid.* 215. The grant of jurisdiction, in cases of admiralty cognizance, conferred upon the national courts, is exclusive of those of the states. *The Moses Taylor*, 4 Wall. 411; *The Hine*, *Ibid.* 556. In all cases where a maritime lien arises, the original jurisdiction to enforce it, by a proceeding in rem, is exclusively in the courts of the United States. *The Belfast*, 7 Wall. 624. The admiralty and maritime jurisdiction of the United States is not limited by the statutes or judicial prohibitions of England: the same defined. 11 Wall. 21. Claims for half pilotage, for tender and refusal of services, are cases of admiralty jurisdiction. *The Wright*, 1 Deady, 597; *The America*, 2 Am. L. R. 458; *The California*, 1 Sawyer, 453. Under Rule XII of 1872, material men may enforce their lien for supplies furnished a vessel at her home port, or elsewhere. *The Augusta*, 5 Pa. Law Rep. 230; *S. C. 2 Sawyer*. See *The Harrison*, note, 2 Abb., U. S. R. 84.

1. An action cannot be prosecuted against the United States without being authorized by congress. *Cohens v. Virginia*, 6 Wh. 411. See *Murray's Lessee v. Hoboken Land Improvement Co.* 18 How. 283. But this does not prevent the exercise of appellate jurisdiction, to obtain by writ of error a reversal of a judgment which has been rendered in favor of the United States. *Ibid.* Nor does it preclude individuals, when sued by the United States, from availing themselves of credits or set-offs against the United States. *U. S. v. Bank of Metropolis*, 15 Pet. 392. See Act 24 Feb., 1855, establishing court of claims, 10 Stat. 612. Where the United States is plaintiff, and the defendant pleads a set-off, no judgment can be rendered against the government for a sum ascer-

tained to be due the defendant. *U. S. v. Eckford*, 6 Wall. 484. In the court of claims, the government is liable for refusing to receive and pay for, what it has agreed to purchase. *Gibbons v. U. S.* 8 Wall. 269. Where the United States have dedicated land to a particular use, they may sue in a court of equity, to prevent its diversion to other purposes. *U. S. v. Illinois C. R. Co.*, 1 C. L. N. 427. When property of the United States, liable to be proceeded against in rem. *The Davis*, 10 Wall. 15. *Audita querela* does not lie against. *Avery v. U. S.*, 12 Wall. 304.

2. This includes a suit brought by one state against another, to determine a question of disputed boundary. *Rhode Island v. Mass.* 12 Pet. 557; *Florida v. Georgia*, 17 How. 478; *Missouri v. Iowa*, 10 How. 1. There must be a state government competent to represent the state, to enable it to sue in the supreme court. *Texas v. White*, 7 Wall. 700. This clause only applies to members of the union, and public bodies owing obedience and conformity to its constitution and laws. *Scott v. Jones*, 5 How. 377. A state is within the party to the record, as a plaintiff or defendant in its political capacity. *Osborn v. U. S. Bank*, 9 Wh. 738; 1 Curt. Com., § 63. A suit against the governor of a state, in his official capacity, is a suit against the state. *Kentucky v. Ohio*, 24 How. 66.

3. See *Penn. v. Wheeling & Belmont Bridge Co.*, 13 How. 618. The 11th article of the amendments has forbidden suits by individual citizens against the states.

4. This clause does not embrace cases where one of the parties is a citizen of a territory or the District of Columbia. *Hepburn v. Eliza*, 2 Cr., 545; *Corporation of New Orleans v. Winter*, 1 Wh. 81; *Barney v. Baltimore*, 6 Wall. 280. Citizenship, when spoken of in the constitution, in reference to the jurisdiction of the federal courts, means nothing more than residence. *Lessee of Cooper v. Galbraith*, 3 W. C. C. 546; *Gassies v. Ballon*, 6 Pet. 761; *Shelton v. Tiffin*, 6 How. 163; *Lessee of Butler v. Farnsworth*, 4 W. C. C. 101. But a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a citizen within the meaning of the constitution, nor entitled to sue in that character in the federal courts. *Dred Scott v. Sanford*, 19 How. 393. The law declared to be otherwise by the fourteenth amendment. A native of the United States, residing abroad, who has taken an oath of allegiance to a foreign government, is not a citizen of any state, entitled to sue in a national court. *Prentiss v. Brennan*, 2 Bl. C. C. 162. A corporation created by, and transacting business in a state, is to be deemed an inhabitant of the state, capable of being treated as a citizen, for all purposes of suing and being sued. *Louisville Railroad Co. v. Litson*, 2 How. 497; *Marshall v. Baltimore and Ohio Railroad Co.*, 16 How. 414. The judiciary act confines the jurisdiction, on the ground of citizenship, to cases where the suit is between a citizen of a state where the suit is brought, and a citizen of another state; and although the constitution gives a broader extent to the judicial power, the actual jurisdiction of the circuit courts is governed by the acts of congress. *Moffat v. Sobey*, 2 Paine, 103. See, act 28 Feb. 1839, and *Taylor v. Cook*, 2 McLean, 516. Where the suit is brought by an assignee. See, *Assignee of Brainard v. Williams*, 4 McLean,

**MARCH 4, 1789.** under Grants of different States,<sup>1</sup> and between a State, or the Citizens thereof, and foreign States,<sup>2</sup> Citizens or Subjects.<sup>3</sup>

**Original jurisdiction of the supreme Court.** 2. In all Cases affecting Ambassadors,<sup>4</sup> other public Ministers and Consuls,<sup>5</sup> and those in which a State shall be a Party,<sup>6</sup> the supreme Court shall have original Jurisdiction.<sup>7</sup>

**Appellate jurisdiction.** In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with

122; *Sheldon v. Sill*, 8 How. 411. The constitution has defined the limits of the judicial power, but has not prescribed how much of it shall be exercised by the circuit courts. *Turner v. Bank of North America*, 4 Dall. 10; *McIntyre v. Wood*, 7 Cr. 506; *Kendall v. U. S.*, 12 Pet. 616; *Cary v. Curtis*, 3 How. 245; *Coal Co. v. Blatchford*, 11 Wall. 172; *Rice v. Houston*, 13 Wall. 66. Congress has conferred upon the federal courts but a portion of the jurisdiction contemplated by the constitution. *Clarke v. City of Janesville*, 4 Am. L. R. 593. A suit by a corporation in its corporate name, is conclusively presumed to be brought by citizens of the state which created it. *O. and M. Railway Co. v. Wheeler*, 1 Black. 286. A municipal corporation, erected by a state, within its limits, may be sued in a national court by a citizen of another state. *Cowles v. Mercer Co.*, 7 Wall. 118. A bona fide conveyance of land to a citizen of another state, will sustain the jurisdiction, whatever the motives of the grantor. *McDonald v. Smalley*, 1 Pet. 620; *Smith v. Kernochen*, 7 How. 198; *Jones v. Teague*, 18 How. 76. Parties have a clear right to acquire property by purchase or gift, for the purpose of maintaining a suit in a national court concerning it. 3 Am. L. T. Rep. 127; *S. C. 1 Sawyer*, 66; *Osborne v. B. C. Railway Co.*, 5 Bl. C. C. 366.

1. Cases of grants made by different states are within the jurisdiction, notwithstanding one of the states, at the time of the first grant, was part of the other. *Town of Pawlet v. Clark*, 9 Cr. 292. It is the grant which passes the legal title, and if the controversy is founded upon conflicting grants of different states, the federal courts have jurisdiction, whatever may have been the prior equitable title of the parties. *Colson v. Lewis*, 2 Wh. 377.

2. An Indian tribe, or nation, within the United States is not a "foreign state," within the meaning of this clause. *Cherokee Nation v. Georgia*, 5 Pet. 1. The Pueblo Indians of New Mexico, being citizens thereof, by the treaty of Gaudalupe Hidalgo, became citizens of the United States. 1 C. L. N., 169.

3. If the party to the record be an alien he is within this clause, whether he sue in his own right, or as a trustee, if he have a substantial interest as trustee. *Chappeldelaine v. Dechenaus*, 4 Cr. 366. And if the national plaintiff, although a citizen, sue for the use of an alien, who is the real party in interest, the case is within the jurisdiction. *Browner v. Storde*, 5 Cr. 303. A foreign corporation is an alien for this purpose. *Society for propagating Gospel v. Town of N. Haven*, 8 Wh. 464. But in all these cases the opposite party must be a citizen, and this must appear from the record. *Jackson v. Twentyman*, 2 Pet. 136; *Hinckley v. Byrne*, 1 Deady, 224. A mere declaration to become a citizen, under the naturalization laws, is not sufficient to prevent an alien from being regarded as a foreign subject within the meaning of this clause. *Baird v. Byre*, 3 Wall. Jr. An alien may sue in the circuit court, though a resident of the same state as the citizen defendant. *Budlove v.*

*Nocolet*, 7 Pet. 413. In an action by a citizen of a state against the subject of a foreign state, the circuit court has jurisdiction on account of the character of the parties, without reference to the fact of which of them is plaintiff or defendant, or of what state of the United States the plaintiff is a citizen. *Hinckley v. Byrne*, 1 Deady, 224.

4. See notes 59 and 90 page 19.

5. A State court has no jurisdiction of a suit against a consul; and whenever this defect of jurisdiction is suggested the court will quash the proceedings. It is not necessary that it should be by plea before general imparlance. *Munhardt v. Soderstrom*, 1 Binn. 138; *Davis v. Packard*, 6 Pet. 41; *Commonwealth v. Kosloff*, 5 S. & R. 546; *Griffin v. Doringuer*, 2 Duer. 656. A consul, however, may be summoned as a garnishee in an attachment from a State court. *Kedderlin v. Meyer*, 2 Miles. 242. And he may maintain a suit in a State court. *Sagony v. Wissman*, 2 Ben. 240. The jurisdiction of the supreme court in suits against consuls, although original, is not exclusive of the circuit courts. *U. S. v. Ravara*, 2 Dall. 297; *St. Luke's Hospital v. Barclay*, 3 Bl. C. C. 259; *Graham v. Stucken*, 4 Bl. C. C. 50.

6. The circuit courts have no jurisdiction of a cause in which a State is a party. *Gale v. Babcock*, 4 W. C. C. 199. The supreme court has not original jurisdiction of a suit brought by a State against its own citizens. *Pennsylvania v. Quicksilver Co.*, 10 Wall. 533.

7. Congress has no power to confer original jurisdiction on the supreme court in other cases than those enumerated in this section. *Marbury v. Madison*, 1 Cr. 137. In the matter of *Metzer*, 5 How. 176, 191; *In re Kaine*, 14 How. 119; *Ex parte Yerger*, 8 Wall. 98. In those cases in which original jurisdiction is given to the supreme court, founded on the character of the parties, the judicial power of the United States can not be exercised in its appellate form. *Osborn v. U. S. Bank*, 9 Wh. 820. But if a case draws in question the laws, constitution or treaties of the United States, though a State be a party, the jurisdiction of the federal courts is appellate; for in such case, the jurisdiction is founded, not upon the character of the parties, but upon the nature of the controversy. *Cohens v. Virginia*, 6 Wh. 392; *Martin v. Hunter's Lessee*, 1 Wh. 337. A suit against the governor of a State in his official character, is a suit against the State. *Kentucky v. Ohio*, 24 How. 66. The jurisdiction of the supreme court is conferred by the constitution. *Smith v. Allyn*, 1 Pa. 453. Affirmative words in the constitution, declaring in what cases the supreme court shall have original jurisdiction, must be construed negatively, as to all other cases. *Ex parte Vallandigham*, 1 Wall. 252. Congress cannot confer jurisdiction on the supreme court, by an act authorizing the transfer of causes to it from the circuit courts. *The Alicia*, 7 Wall. 671; *Ex parte Yerger*, 8 Wall. 85; *The Nonesuch*, 9 Wall. 504.

such Exceptions, and under such Regulations as the Congress shall make.<sup>1</sup> MARCH 4, 1789.

3. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury;<sup>2</sup> and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place<sup>3</sup> or Places, as the Congress may by Law have directed.

SEC. 3. Treason against the United States shall consist only in levying War against them,<sup>4</sup> or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason, unless on the Testimony of two Witnesses to the same overt Act,<sup>5</sup> or on Confession in open Court.

2. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture, except during the Life of the Person attainted.

## ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.<sup>6</sup> And the Congress may by general Laws

1. Acts of congress affirming the appellate jurisdiction of the supreme court except from it all cases not expressly therein provided for; and the repeal of such an act necessarily negatives jurisdiction under it of the cases therein described. *Ex parte McCordle*, 512; *Ex parte Yerger*, 8 Wall. 85. In the exercise of its appellate jurisdiction, the supreme court may, by habeas corpus, relieve from unlawful imprisonment, one held in military custody, who has been remanded after a hearing before a circuit court. *Ex parte Yerger*, 8 Wall. 94.

2. This does not constitute them judges of the law in criminal cases. *U. S. v. Morris*, 1 Curt. O. C. 23, 49; *U. S. v. Shive*, Bald. 510; *U. S. v. Battiste*, 2 Sumn. 240; and see *Townsend v. The State*, 2 Blackf. 152; *Pierce v. The State*, 13 N. H. 536; *Commonwealth v. Porter*, 10 Met. 263; *Wharton on homicide*, 481. It only embraces those crimes which by former laws and customs had been tried by jury. *U. S. v. Duane*, Wall. O. C. 106; *U. S. v. Mayer*, 1 Dedy, 128; *U. S. v. Dodge*, Ibid. 189.

3. A crime committed against the laws of the United States, without the limits of a State, is not local, but may be tried at such place as congress shall designate. *U. S. v. Dawson*, 15 How. 488; *U. S. v. Jackalow*, 1 Bl. 484; *U. S. v. Furlong*, 5 Wh. 184.

4. There must be an actual levying of war; a conspiracy to subvert the government by force is not treason; nor is the mere enlistment of men, who are not assembled, a levying of war. *Ex parte Boleman*, 4 Cr. 75; *U. S. v. Hanway*, 2 Wall. Jr. 140, Ibid. 136; 4 Am. L. J. 83. And no man can be convicted of treason who was not present when the war was levied. 2 Burr's Trial, 401, 439. An unnaturalized alien cannot be guilty of treason against the United States. *United States v. Vill-*

lato, 2 Dall. 370. An insurrection, to prevent by force and intimidation, the execution of an act of congress, is treason, by levying war. *United States v. Mitchell*, 2 Dall. 348; *United States v. Fries*, Whar. St. Tr. 458; 2 Wall. Jr., C. C. 134; *U. S. v. Hanway*, Ibid. 140; *U. S. v. Hoxie*, 1 Pa. 265.

5. This it seems refers to the proofs on the trial, and not to the preliminary hearing before the committing magistrate, or the proceeding before the grand jury. 2 Wall. Jr. 238; *U. S. v. Guiner*, 4 Phila. 396; *Burr's Trial*, 196. But see, *Frie's Trial*, 14 Whar. St. Tr. 480.

6. A judgment of a state court has the credit, validity and effect, in every other court within the United States, which it had in the state where it was rendered. *Hampton v. McConnell*, 3 Wh. 234; *Sarchel v. The Sloop Davis*, Crabbe 185. And it matters not that it was commenced by an attachment of property, if the defendant afterwards appeared and took defence. *Mayhew v. Thatcher*, 6 Wh. 129. Such judgments, as far as the courts rendering them had jurisdiction, are to have in all courts full faith and credit, in which the merits of the judgment are never put in issue, with the qualification that it appears by the record that the party had notice. *Benton v. Bergot*, 10 S. & B. 242; *Christmas v. Russell*, 5 Wall. 290. By the act of congress they have not conclusive effect, but only such effect as they possessed in the state whence they were taken. *Green v. Sarminto*, 3 W. C. C. 17; *Bank of the State of Alabama v. Dalton*, 9 How. 528. And therefore, whatever pleas would be good therein, in such state, and none others, can be pleaded in any other court in the United States. *Hampton v. McConnell*, 3 Wh. 234; *Mild v. Daryce*, 7 Or. 484. It is competent to show that the judgment was obtained by fraud or that the

MARCH 4, 1789.

Proving public  
acts, &c.

Privileges.

Fugitives from  
justice.

prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.<sup>1</sup>

SEC. 2. The Citizens of each State<sup>2</sup> shall be entitled to all Privileges and Immunities<sup>3</sup> of Citizens in the several States.

2. A Person charged in any State with Treason, Felony, or other Crime,<sup>4</sup> who shall flee from Justice, and be found in another State, shall, on Demand of the Executive Author-

court rendering it had no jurisdiction. *Warren Man. Co. v. Etna Ins. Co.*, 2 Paine 502; *Steele v. Smith*, 7 W. & S. 447. A plea of the statute of limitations, in an action on a judgment of another state, goes to the remedy; and is governed by the *lex fori*. *McElmoyle v. Cohn*, 13 Pet. 313; *Bacon v. Howard*, 20 How. 22. A state legislature cannot bar an action on a judgment given in another, by a statute of limitation. *Christmas v. Russel*, 5 Wall. 298.

1. See act of 26 May, 1790, 1 Stat. 122. The legislation of Congress amounts to this, that the judgment of another state shall be record evidence of the demand, and that the defendant, when sued on the judgment, cannot go behind it and controvert the contract, or other cause of action, on which the judgment is founded; that it is evidence of an established demand, which standing alone is conclusive between the parties to it. *Bank of the State of Alabama v. Dalton*, 9 How. 528. *Christmas v. Russel*, 5 Wall. 301. The act of 1790 does not apply to the records of the national courts. *Mason v. Towerson*, 1 Cr. C. C. 190. Semble, that the act does not apply where the record of a state court is sought to be used in a national court. *Bennett v. Bennett*, 1 Drady, 307.

2. This does not apply to corporations. *Warren Man. Co. v. Etna Ins. Co.*, 2 Paine, 502. But see *Holmes v. Nelson*, Phila. R. 218. *Paul v. Virginia*, 8 Wall., 168. Since the adoption of the constitution, no state can, by any subsequent law, make a foreigner or any other description of persons, citizens of the U. S., nor entitle them to the rights and privileges secured to citizens by that instrument. *Dred Scott v. Sanford*, 19 How. 393. Since the adoption of the thirteenth amendment, a negro born in the U. S. is a citizen thereof. In re *Turner*, 1 Am. L. T. 9. Birth and allegiance are simultaneous; citizens within the meaning of the constitution, are free inhabitants, born in the U. S., or who have been naturalized by act of congress. *U. S. v. Rhodes*, 1 Am. L. T., 22. A person born abroad in the course of a voyage made by his father, who was a citizen of the U. S., is to be deemed such citizen also. *U. S. v. Gordon*, 5 Bl. C. C. 18. By the common law, a child born within the allegiance of the U. S., is born a subject thereof, without reference to the political status or condition of its parents. *McCay v. Campbell*, 5 Am. L. T. 407. During the period of the joint occupation of the Oregon territory, a child born therein of parents who were British subjects, is not a citizen of the U. S., *Ibid.*

3. This is confined to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their independence. They may all be comprehended under the following heads: Protection by government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; sub-

ject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through or reside in any other state, for the purpose of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the court of the state; to take hold, and dispose of property, either real or personal; and an exemption from higher taxes and impositions than are paid by the other citizens of the state, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental. *Corfield v. Coryell*, 4 W. C. C. 390-1. And to this clause of the constitution, it seems, may be properly referred the right which, it has been asserted, is possessed by a citizen of one state to pass freely with his slaves through the territory of another state, in which slavery is not recognized. *U. S. v. Williamson*, 4 Am. L. R. 19. See *The People v. Lemmon*, 5 L. R. 488, contra. It does not embrace privileges conferred by the local laws of a state. *Conner v. Elliot*, 18 How. 591. Such as the right of representation or election. *Murray v. McCarty*, 2 Munf. 393. The privileges and immunities secured to citizens of each state in the several states, by this provision, and those privileges and immunities which are common to the citizens in the latter states under their constitution and laws, by virtue of their being citizens. Special privileges enjoyed by citizens in their own states and not secured in other states by this provision. *Paul v. Virginia*, 8 Wall., 180; *Liverpool In. Co. v. Massachusetts*, 10 Wall., 567; *Ducat v. Chicago*, *Ibid.*, 410.

4. It is not necessary that the crime charged should constitute an offence at common law. In re *William Felter*, 3 Zab. 311. It is enough that it is a crime against the law of the State from which he fled. *Johnson v. Riley*, 13 Geo. 97. In re *Clark*, 9 Wend. 221. These words, "treason, felony, or crime," include every offence made punishable by the laws of the state where the act is committed. *Kentucky v. Ohio*, 24 How. 66. The governor of a state, upon a demand made for the surrender of a fugitive from justice, has no right to exercise any discretionary power, as to the nature or character of the crime charged. *Ibid.* The governor of a State has no authority to cause the arrest and surrender of a citizen, as a fugitive from justice, unless it appears that the alleged crime was committed in the State which makes the demand. *Ex parte Smith*, 3 McLean 121. Governors of States, in issuing warrants for such arrest and surrender, act by authority of the laws of the United States, though the State may have legislated on the same subject. *Ibid.* The national courts have authority to inquire into the legality of the arrest of one held by virtue of such warrant. *Ibid.*

ity of the State from which he fled,<sup>1</sup> be delivered up, to be removed to the State having Jurisdiction of the Crime.<sup>2</sup> MARCH 4, 1796.

3. No Person held to Service or Labour in<sup>3</sup> one State, under the Laws thereof, escaping into another,<sup>4</sup> shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up<sup>5</sup> on Claim of the Party to whom such Service or Labour may be due.<sup>6</sup> Fugitives from labor.

SEC. 3. New States may be admitted by the Congress into this Union;<sup>7</sup> but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.<sup>8</sup> New States.  
Formation of new States out of other States.  
Concerning the territory or other property of the U. S.

2. The Congress shall have Power to dispose of<sup>9</sup> and

1. A fugitive from justice may be arrested and detained, until a formal requisition can be made by the proper authority. *Commonwealth v. Deacon*, 10 S. & R. 135; *Dow's case*, 6 Harris 39; *In re William Felter*, 3 Zabr. 311.

2. The alleged crime must have been committed in the State from which the party is claimed to be a fugitive; and he must be actually a fugitive from that State. *Ex parte Smith*, 3 McLean 133; *Hayward's Case*, 1 Am. L. J. 231; *in re William Felter*, 3 Zabr. 311.

3. This includes apprentices. *Boaler v. Cummins*, 1 Am. L. R. 664.

4. This does not extend to the case of a slave voluntarily carried by his master into another State, and there leaving him under the protection of some law declaring him free. *Butler v. Hopper*, 1 W. C. C. 499; *Vaughn v. Williams*, 3 McLean 530; *Pierce's Case*, 1 Western Legal Observer 14. Slavery is a municipal regulation; is local, and cannot exist without authority of law. *Miller v. McQuerry*, 5 McLean 469. But the question, whether slaves are made free by going into a state in which slavery is not tolerated, with the permission of their master is purely one of local law, and to be determined by the courts of the state in which they may be found. *Strader v. Graham*, 10 How. 82; *Dred Scott v. Sanford*, 19 How. 396; *In re Perkins*, 2 Cal. 424.

5. As to slaves escaping and taking refuge among the Indian tribes. See 3 Opin. 370, and 6 Opin. 302.

6. The owner of a slave is clothed with full authority, in every state of the Union, to seize and recapture his slave, whenever he can do it without a breach of the peace or any illegal violence. *Prigg v. Penn.*, 16 Pet. 539. But see *Giltner v. Gorham*, 4 McLean, 402. The constitution, however, recognizes slaves as property, and pledges the federal government to protect it. *Dred Scott v. Sanford*, 19 How. 396. A statute punishing the harboring or secreting a fugitive slave, is not in conflict with the constitution or laws of the United States. *Moore v. Illinois*, 14 How. 123.

7. All measures commenced and prosecuted with a design to subvert the territorial government, and to establish and put in force in its place a new government, without the consent of congress are unlawful. But the people of any territory may peaceably meet together in primary assemblies, or in convention chosen by such assemblies, for the

purpose of petitioning congress to abrogate the territorial government, and to admit them into the union as an independent state, and if they accompany their petition with a constitution framed and agreed upon by their primary assemblies, or by a convention of delegates chosen by such assemblies, there is no objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it; provided such measures be prosecuted in a peaceable manner, in subordination to the existing government, and in subserviency to the power of congress to adopt, reject, or disregard them, at their pleasure, 2 Opin. 726. It seems that the recognition of a state government, is a political and not a judicial question. See, *Scott v. Jones*, 5 How. 343. Congress has no power to impose on any new state, on its admission into the Union, any restrictions or limitations not imposed upon all. *Pollard v. Hagen*, 3 How. 312; *Permoli v. New Orleans* Ibid. 589. *Strader v. Graham*, 10 How. 82; *Veale v. Moore*, 14 How. 568; *Scott v. Sanford*, 19 How. 395; *Seabury v. Field*, 1 McAllister, 4.

8. The consent of congress to the formation of a new State within the jurisdiction of another, need not be expressly given; it may be inferred from legislation. *Virginia v. West Virginia*, 11 Wall. 39.

9. The power of congress to dispose of the public lands, is not limited to making sales, they may be leased. *U. S. v. Gratiot*, 1 McLean, 454; *Ibid.* 14 Pet. 526; 4 Opin. 487. But no property belonging to the United States, can be disposed of except by authority of an act of congress. *U. S. v. McCall*, 1 Paine, 646. Congress alone has the power to make and authorize appropriations of the public lands. *U. S. v. Fitzgerald*, 15 Pet. 407; *Irwin v. Marshall*, 20 How. 558. Congress has no power to organize a board of revision, to annul titles confirmed many years previously, by the authorized agents of the government. *Reichart v. Felps*, 6 Wall. 160. Whenever a tract of land has been appropriated to the public use, it is severed from the mass of the public domain, and subsequent laws of sale are not construed to embrace it. *Wilcox v. Jackson*, 13 Pet. 498. A grant may be made by statute, and a confirmation by law, is to all intents and purposes a grant. *Stratner v. Lucas*, 12 Pet. 441; *Field v. Seabury*, 19 How. 323, 333; *Chapman v. School District No. 1*, 1 Deady. 113; *Glasgow v. Horter*, 1 Bl. 695; *Griffin v. Gibb*, 1 McAllister, 217. A congressional grant of lands to a State, to be located

MARCH 4, 1789. make all needful Rules and Regulations respecting the Territory<sup>1</sup> or other Property belonging to the United States, and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Guarantee of a  
Republican  
form of Govern-  
ment.

Each State to be  
protected  
against inva-  
sion.

SEC. 4. The United States shall guarantee to every State in this Union a Republican Form of Government,<sup>2</sup> and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

### ARTICLE V.

Amendments to  
the Constitu-  
tion.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments<sup>2</sup> to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall

No State with-  
out its consent  
to be deprived  
of its equal suff-  
rage in the Sen-  
ate.

under the direction of its legislature, on any lands of the United States, is a complete title, from the time of making the selection. *Lessieur v. Price*, 12 How. 59. A public grant, conveying a present beneficial interest, is irrevocable. *Rice v. M. & N. Railway Co.*, 1 Bl. 358. The act of September 24, 1850 (9 Stat. 519), concerning swamp and overflowed lands, conferred a present vested right therein, which excepted them from subsequent railway grants. *Railway Co. v. Smith*, 9 Wall. 95. The power of congress to dispose of the public domain, is subject to no limitations; it cannot be interfered with, or its exercise embarrassed by any State legislation. *Gibson v. Choteau*, 13 Wall. 99.

1. The term "territory" as here used, is merely descriptive of one kind of property, and is equivalent to the word lands. *U. S. v. Gratiot*, 14 Pet. 537. The power over the public lands is vested in congress by the constitution, without limitation, and has been considered the foundation on which the territorial governments rest. *Ibid.* 526. On the acquisition of territory by treaty, the United States does not succeed to the prerogative rights of the former sovereign, but holds it subject to the institutions and laws of its own government. *Pollard v. Hagan*, 3 How. 212. Congress has the power to govern the territories of the United States, and in so doing exercises the combined powers of the national and State governments. *Am. In. Co. v. Canter*, 1 Pet. 542; *Benner v. Porter*, 9 How. 235; *Cross v. Harrison*, 16 How. 194; *Stacy v. Abbott*, 1 Am. L. T. 84; *Murrin v. Converse*, 2 C. L. N. 113. This clause applies only to territory within the chartered limits of some one of the states when they were colonies of Great Britain. It does not apply to territory acquired by the present federal

government, by treaty or conquest, from a foreign nation. *Dred Scott v. Sanford*, 19 How. 395. The United States, under the present constitution, can not acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a territory, until it has a population which in the judgment of congress entitles it to be admitted as a State of the Union. During the time it remains a territory, congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States—and may establish a territorial government—and the form of this local government must be regulated by the discretion of congress—but with powers not exceeding those which congress itself, by the constitution, is authorized to exercise over citizens of the United States, in respect to their rights of persons or rights of property. *Scott v. Sandford*, 395. The various territorial governments have been organized by congress upon the theory of leaving to the inhabitants thereof all the powers of self government consistent with the supremacy and supervision of national authority. *Clinton v. Englebrecht*, 13 Wall. 441.

2. Authority to provide for the restoration of state governments, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. *Texas v. White*, 7 Wall. 726.

3. An amendment to the constitution need not be presented to the president for his approval. *Hollingsworth v. Virginia*, 3 Dall., 378.

in any Manner effect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

1. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Debts, &c., contracted prior to adoption of the Constitution, valid.

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.<sup>2</sup>

The Constitution and law of the U. S. or treaties, the supreme law.

3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and

What officers to take the oath to support the Constitution.

1. Whenever a right grows out of, or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the states; and whoever may have this right it is to be protected. *Dwings v. Norwood's Lessee*, 5 Cr. 348; *Fairfax v. Lessee of Hunter*, 7 Cr. 627; *Ware v. Hylton*, 3 Dall. 242 to 284; *Lessee of Gordon v. Halliday*, 1 W. C. C. 291; *Doe ex dem. Fisher v. Harnden*, 1 Paine C. C. 59; *Gordon v. Kerr*, 1 W. C. C. 322; *Worcester v. Georgia*, 6 Pet., 515; 6 Opin. 291. But though a treaty is a law of the land, and its provisions must be regarded by the courts as equivalent to an act of the legislature when it operates directly on a subject, yet if it be merely a stipulation for future legislation by congress, it addresses itself to the political and not to the judicial department, and the latter must await the action of the former. *Foster v. Neilson*, 2 Pet. 253; *Johns v. Walker*, 2 Pa., 688. A treaty ratified with proper formalities is, by the constitution, the supreme law of the land, and the courts have no power to examine into the authority of the persons, by whom it was entered into on behalf of the foreign nation. *Doe v. Braden*, 16 How. 635. A treaty is binding upon contracting parties, unless otherwise provided, from the day of its date. The ratification relates back to the time of signing. *Davis v. Parish of Concordia*, 9 How. 289. When territory is ceded, the national character continues for commercial purposes, until actual delivery; but between the time of signing and such delivery, the sovereignty of the ceding power ceases, except for strictly municipal purposes. *Ibid.* *Haver v. Yaker*, 9 Wall., 24. But where a treaty operates upon individual rights, the principle of relation does not apply, and so far as it affects them it is not considered concluded until there is an exchange of ratifications. *Ibid.* A treaty between a foreign government and the U. S. cannot enlarge the constitutional powers of the latter. *New Orleans v. U. S.*, 10 Pet. 662. Congress has no constitutional power to settle the rights under treaties except in

cases purely political. The construction of them is the peculiar province of the judiciary, where a case shall arise between individuals. *Wilson v. Nall*, 6 Wall. 89. Where specific lands are reserved for the use of an Indian tribe, by treaty, its effect is, to confirm the original Indian title, which will prevail against any other derived from the government. *Gaines v. Nicholson*, 9 How., 356. Rules of interpretation favorable to the Indian tribes, are to be adopted, in construing our treaties with them. *The Kansas Indians*, 5 Wall., 737. It results from the nature and fundamental principles of our government, that a treaty cannot change the constitution; but a treaty may supersede a prior act of congress and an act of congress may supersede a prior treaty. *The Cherokee Tobacco*, 11 Wall., 620.

2. The government of the United States and the government of a state are distinct and independent of each other within their respective spheres of action, although existing and exercising their powers within the same territorial limits, and when ever any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the national government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States. A state judge has no jurisdiction to issue a writ of habeas corpus, or to continue proceedings under the writ when issued for the discharge of a person held under the authority or claim and color of the authority of the United States, the writ should be refused; and when a writ of habeas corpus is served on a marshal or other person having a prisoner in custody under the authority of the United States, it is his duty by a proper return to make known to the state judge or court the authority by which he holds him. But, at the same time, it is his duty not to obey the process of the state, but to obey and execute the process of the United States. *Ableman v. Booth*, 21 How. 506; *Tarbell Case*, 13 Wall. 397.



MARCH 4, 1789.

No religious  
test a qualifica-  
tion for office.

of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE VII.

Ratification of  
the Constitu-  
tion.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the same.<sup>1</sup>

DONE in Convention by the Unanimous Consent of the States present the Seventeenth day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names.

GEO. WASHINGTON,

*Presid't and deputy from Virginia.*

## ARTICLES

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION.

Sept. 25, 1789,  
1 Stat. 97.

*Proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.<sup>2</sup>*

## ARTICLE I.

Congress shall make no law respecting an establishment

1. The constitution was adopted by the convention appointed in pursuance of the resolution of the congress of the confederation of February 21, 1787, on September 17, 1787, and was ratified by the conventions of the several states as follows: Delaware, Dec. 7, 1787; Pennsylvania, Dec. 12, 1787; New Jersey, Dec. 18, 1787; Georgia, Jan. 2, 1788; Connecticut, Jan. 9, 1788; Massachusetts, Feb. 6, 1788; Maryland, Ap. 23, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1787; New York, July 26, 1788; North Carolina, Nov. 21, 1789; Rhode Island, May, 29, 1790.

The following extract from the journal of the congress of the confederation, shows when the constitution took effect:

IN CONGRESS.

SATURDAY, September 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative by the unanimous votes of nine states, viz: of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, South Carolina, and Georgia.

WHEREAS, The convention assembled in Philadelphia, pursuant to the resolution of congress of the 21st of February, 1787, did, on the 17th of September in the same year, report to the United States in congress assembled, a constitution for the people of the United States; whereupon, congress,

on the 28th of the same September, did resolve unanimously, "that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case;" and whereas the constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications duly authenticated, have been received by congress, and are filed in the office of the secretary; therefore,

*Resolved*, That the first Wednesday in January, next be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next be the time, and the present seat of congress the place, for commencing proceedings under the said constitution.

2. The first ten of the following articles of amendment, with two others which were not ratified by the requisite number of states, were submitted to the several state legislatures by a resolution of congress, of September 25, 1789. They are limita-

of religion,<sup>1</sup> or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

SEPT. 25, 1789.  
1 Stat. 87.  
Religion, Freedom of Speech, right of petition.

## ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Right to bear and keep arms.

## ARTICLE III.

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers.

## ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants<sup>2</sup> shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Unreasonable searches and seizures.  
No warrant to issue but upon probable cause.

## ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous<sup>3</sup> crime, unless on a presentment or indictment

Prosecution for capital or other infamous crimes.

tions upon the power of the national government, and not those of the states. *Barron v. Baltimore*, 7 Pet. 243; *Bonaparte v. C. and A. Railway Co.*, Bald. 220; *Livingston v. Moore*, 7 Pet. 551; *Fox v. Ohio*, 5 How. 434; *Withers v. Buckley*, 20 How. 81; *Griffin v. Gibb*, 1 McAllister, 212; *Pervear v. Commonwealth*, 5 Wall. 475; *U. S. v. Rhodes*, 1 Ab. 43.

1. The constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties; that is left to the state constitution and laws. *Permoli v. First Municipality*, 3 How. 589. In controversies in a civil court, concerning the property rights of religious societies, where such rights are dependent on a question of doctrine, discipline, ecclesiastical law, rule or custom, or church government, and that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and be governed by it, in its application to the case before it. *Watson v. Jones*, 13 Wall. 713.

2. This refers only to process issued under the authority of the United States. *Smith v. Maryland*, 18 How. 71. And it has no application to proceedings for the recovery of debts, as a treasury distress warrant. *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 How. 272. No de-

partment of the government can disturb the safeguards of civil liberty incorporated in the constitution, except the one concerning the writ of habeas corpus. *Ex parte Milligan*, 4 Wall. 125. Criminal process cannot be awarded upon the suggestion of the district attorney, unsupported by oath. *U. S. v. Burr*, 2 Whar. Cr. Cas. 573; *U. S. v. Shephard*, 1 Ab. U. S. 432. A peace officer may arrest persons engaged in an affray, without a warrant. *U. S. v. Pignal*, 1 Cr. C. C., 310. And for a breach of the peace committed in his view. *U. S. v. Hart*, Pet. C. C. 390. All officers of the United States are liable to the ordinary process for arrest and detention, when accused of felony. *U. S. v. Kerby*, 7 Wall. 482. It is not necessary on a preliminary hearing, the corpus delicti should be established independently of the prisoner's confession. *U. S. v. Bloomgart*, 2 Ben. 356. A commitment by a justice of the peace, is bad, unless it set forth a good, certain cause, supported by oath. *Ex parte Buford*, 3 Cr. 448. Arrest for trial is a proceeding belonging to the judiciary, not to the executive branch of the government. 1 Opin. 229.

3. Infamous crimes are treason, felony, and every species of the crimes falsi, such as perjury, conspiracy and barratry. *Parker v. The People*, 20 Johns. 460.

SEPT. 25, 1789.  
1 Stat., 97.

No one to be  
twice put in  
jeopardy for the  
same crime.

Private prop-  
erty not to be  
taken for public  
use without just  
compensation.

of a Grand Jury,<sup>1</sup> except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;<sup>2</sup> nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;<sup>3</sup> nor shall private property be taken for public use, without just compensation.<sup>4</sup>

## ARTICLE VI.

Trial by jury in  
criminal cases.  
Counsel and  
other privileges  
of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury<sup>5</sup> of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained

1. The constitution recognizes the right to pursue the common law course of proceeding by criminal information, in all but capital and infamous cases. *U. S. v. Shephard*, 1 Ab. U. S. 432.

2. The court may discharge a jury from giving a verdict in a capital case, without the consent of the prisoner, whenever, in their opinion, there is a manifest necessity for such an act, or the ends of public justice would be otherwise defeated. *U. S. v. Perez*, 9 Wh. 519; *U. S. v. Haskell*, 4 W. C. O. 402; *U. S. v. Watkins*, 3 Cr. C. C. 443; *U. S. v. Book*, 2 Cr. C. C. 294; *U. S. v. Gilbert*, 2 Sum. 19; *U. S. v. Harding*, 1 Wall. Jr. 127; 2 Opin. 665.

3. A distress warrant issued by the treasury department against a defaulting receiver of public moneys is "due process of law." *Murray v. Hoboken L. & I. Co.*, 18 How. 274. The words "law of the land" mean due "process of law." *Ibid.*, 276; *Greene v. Briggs*, 1 Court., 311.

4. Private property may be taken for public use, by allowing the owners a reasonable equivalent. *Calder v. Bull*, 3 Dall. 400. The right to take private property for public use, is incident to all governments; but the obligation to make compensation is concomitant. *Bonaparte v. C. & A. Railway Co.*, Bald., 205; *Jones v. Walker*, 2 Pa., 205; *Chesapeake and Ohio Canal Co. v. Union Bank*, 4 Cr. C. C. 75; *Devarsaigne v. Fox*, 2 Bl. O. C., 95. A law cannot authorize the taking of property, for any other than a public use; and a road or a canal is a public use, if the public have a right of passage for a stipulated, reasonable and uniform toll; otherwise if the toll amount to a prohibition. *Bonaparte v. C. and A. Railroad Co.*, Bald., 222. By the general law of European nations and the common law of England it was a qualification of the right of eminent domain, that compensation should be made for private property taken or sacrificed for public use. And the constitutional provisions of the States and United States, which declare that private property shall not be taken for public use without just compensation, were intended to establish this principle beyond legislative control. It is not necessary that property should be absolutely taken, in the narrowest sense of that word, to bring the case within the protection of this provision; there may be such serious interruption to the common and necessary use of property, as will be equivalent to a taking, within the meaning of the constitution. The backing of water so as to overflow the lands of an individual, or any other superinduced addition of water, earth, sand or other material or artificial structure placed on land, if done

under statutes authorizing it for the public benefit, is such a taking as by the constitutional provision demands compensation. *Pumpelly v. Green Bay Co.*, 13 Wall., 176. The taking of private property, by a naval officer, in order to be destroyed, renders the government liable for its value. *Wiggins v. U. S.*, 3 N. & H., 412. What is such a public use as will justify the taking of private property, is a question for the legislature in the first instance; but their determination is not conclusive. *Horton v. S. and F. Marl Co.*, 17 Am. L. R., 179.

5. This is only to be intended of those crimes which by our former laws and customs had been tried by jury. *U. S. v. Duane*, Wall. C. O. 106. It is province of the court to decide the law and the jury the facts. *U. S. v. Battiste*, 2 Sum., 234; *Settinus v. U. S.*, Cr. 5 C. C., 584. The powers of the jury are exactly alike in civil and criminal cases. *Ibid.* The jury have no right to decide upon the constitutionality of a statute on which the defendant is indicted. *U. S. v. Lyon*, Whar. St. Tr., 333; *U. S. v. Cooper*, *Ibid.*, 659; *U. S. v. Callender*, *Ibid.*, 688; *U. S. v. Shive*, Bald., 511; *U. S. v. Riley*, 5 Bl. C. C., 204. Whether the United States, at a particular time, were at peace or in war is a question of law, to be decided by the court. *Jones v. Walker*, 2 Pa., 694. Whether certain acts are a part of the official duty of an officer, is a question of law for the court. *U. S. v. Buchanan*, 8 How., 83. It is the exclusive province of the jury, to judge of the weight of evidence. *Ewing v. Burnett*, 11 Pet., 41; *U. S. v. Lamb*, 12 Pet., 1; *Richardson v. Boston*, 19 How., 263; *Hyde v. Stone*, 20 How., 170. The jury are the exclusive judges of the credibility of the witness. *U. S. v. Brown*, 4 McLean, 142; *U. S. v. Cole*, 5 McLean, 514. The court may give their opinion on matters of fact to the jury, being careful to distinguish between such opinions, and those on matters of law; the former being entitled to such influence only as the jury may think proper, whilst the latter are conclusive. *Games v. Stiles*, 14 Pet., 322. It is the province of the jury to draw from the evidence all such conclusions as it conduces to prove, and which in their judgment it does prove. *Bank of M. v. Gutschlick*, 14 Pet., 19. Assuming that all the testimony adduced by either party is true, if it does not support his issue, it is the duty of the court so to instruct the jury; whether there be any evidence, is a question for the court; Whether there be sufficient evidence is for the jury. *Chandler v. Von Roeder*, 24 How., 224. The right of the court to decide on the legal effect of a written instrument, cannot be contro-

by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favor;<sup>1</sup> and to have the Assistance of Counsel for his defence.

SEPT. 25, 1789.  
1 Stat. 97.

### ARTICLE VII.

In Suits at common law,<sup>2</sup> where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,<sup>3</sup> and no fact tried by a jury shall be otherwise re-examined<sup>4</sup> in any Court of the United States, than according to the rules of the common law.<sup>5</sup>

Trial by jury in  
suits at common  
law.

### ARTICLE VIII.

Excessive bail<sup>6</sup> shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.<sup>7</sup>

Excessive bail  
and punish-  
ments.

### ARTICLE IX.

The enumeration in the Constitution, of certain rights,

Enumeration of  
rights not to be  
construed.

verted, but a question of boundary is always for the jury. *Barclay v. Howell*, 6 Pet., 499. What is color of title, is for the court; but the question of good faith in the one claiming under it, is for the jury. *Wright v. Mattison*, 18 How., 50. If there be any evidence tending to establish a fact in issue, it must be admitted to the jury. *Drakely v. Gregg*, 8 Wall., 242. On a charge of infringement the question of the identity of the two instruments or machines, must be left to the jury, if there is so much resemblance as raises the question at all. *Tucker v. Spalding*, 13 Wall., 455. Where there are no disputed facts in the case, the court may tell the jury in an absolute form how they should find. *Bevacs v. U. S.*, 13 Wall., 62. The right of trial by jury was intended as well for a state of war as one of peace. *Ex parte Milligan*, 4 Wall., 3.

1. Any person charged with a crime in the courts of the United States, has a right, before, as well as after indictment, to the process of the court, to compel the attendance of his witnesses. *1 Burr's Trial*, 179; *U. S. v. Moore*, Wall., C. C. 23.

2. This includes not merely modes of proceeding known to the common law, but all suits not of equity or admiralty jurisdiction, in which legal rights are settled and determined. *Parson v. Bedford*, 3 Pet. 433. 3 Dall. 297. *Webster v. Reed*, 11 How. 437. *Bains v. The Schooner James and Catherine*, Bald. 544. It does not apply to an examination as to the claims for services under the fugitive slave law. *Miller v. McQuerry*, 5 McLean, 469. *In re Martin*, 2 Paine, 348. Nor to a motion for summary relief. *Banning v. Taylor*, 12 Harris, 289.

3. The right to trial by jury is for the benefit of the parties litigating, and may be waived by them. *U. S. v. Rathbone*, 2 Paine, 578; *Parsons v. Armor*, 3 Pet. 413. But the circuit courts have no power to order a preemptory nonsuit against the will of the plaintiff. *Elmore v. Grymes*, 1 Pet. 469. *D'Wolf v. Raboud*, 1 Pet. 476. *Crane v. Lessee of Morris*, 6 Pet. 568. *Thompson v. Campbell*,

*Hemp*, 8. The legislature may prescribe the process of taking property for public use, and the mode of ascertaining compensation, without a jury trial. *Bonaparte v. C. and A. Railway Co.*, Bald. 205. The collection of taxes is not a judicial, but a ministerial act, and a party thus deprived of his property is not constitutionally entitled to a trial by jury. *Ex parte Meador*, 1 C. L. N. 425. 18 Am. L. R. 577. *Howland v. Soule*, 1 Dredy, 413.

4. See, *Davidson v. Burr*, 2 Cr. C. C. 515. *Maddox v. Stewart*, *Ibid.* 523. This applies to facts tried by a jury in a cause in a state court, and therefore an act of congress (March 3, 1863) which provides for the removal of a judgment in a state court, where the cause was tried by a jury, to the United States circuit court for a re-trial on the facts and the law, is unconstitutional and void. *The Justices v. Murray*, 9 Wall. 274.

5. The common law here alluded to, is not the common law of any individual state, but the common law of England; according to which, facts once tried by a jury are never re-examined, unless a new trial be granted in the discretion of the court, before which the suit is depending, for good cause shown, or unless the judgment of such court be reversed by a superior tribunal, on a writ of error, and a new trial ordered. *U. S. v. Womson*, 1 Gall. 20.

6. Bail ought to be required in a sum sufficient to insure the appearance of the accused, but not so large as to amount to oppression. *U. S. v. Burr*; 1 *Burr's Trial*, 18, 104. The discretion of the magistrate, in taking bail in a criminal case, is to be guided by the compound consideration of the ability of the prisoner and the atrocity of the offence. *U. S. v. Lawrence*, 4 Cr. C. C. 518. A fugitive from justice is not bailable. *In re Kaine*, Bright, F. Dig. 205.

7. The disfranchisement of a citizen is not an unusual punishment. *Barber v. The People*, 30 John. 459. See, *James v. Commonwealth*, 12 S. & R. 220.

SEPT. 25, 1789. shall not be construed to deny or disparage others retained  
1 Stat., 97. by the people.<sup>1</sup>

## ARTICLE X.

Reserved  
powers.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>2</sup>

## ARTICLE XI.

March 5, 1794,  
1 Stat. 402.  
Limitation of  
the judicial  
power.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity,<sup>3</sup> commenced or prosecuted against one of the United States<sup>4</sup> by Citizens of another State, or by Citizens or Subjects of any foreign State.

## ARTICLE XII.

Dec. 12, 1803.  
2 Stat. 306.  
Election of  
President and  
Vice President  
of the U. S.

The Electors shall meet in their respective states,<sup>5</sup> and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed<sup>6</sup> to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates,<sup>7</sup> and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if

1. See, 1 Story Com. § 447. U. S. v. New Bedford Bridge, 1 W. & M. 401. Moore v. Houston, 3 S. & R. 169.

2. See, U. S. v. Bailey, 1 McLean, 234.

3. This does not extend to suits of admiralty or maritime jurisdiction. Olmstead's case, Brightly 9.

4. See, ex parte Madrazo, 7 Pet., 627.

5. If the State be not necessarily a defendant, though its interest may be affected by the decision, the courts of the United States are bound to exercise jurisdiction. Louisville Railroad Co. v. Letson, 2 How. 550. U. S. v. Peters, 5 Cr. 115. A court of admiralty has no jurisdiction of a suit by an individual against a state, where the property is not in the custody of the court, or within its jurisdiction. Ex parte Madrazo, 7 Pet. 627. A suit against the Governor of a State, in his official character, is a suit against the state. Kentucky v. Ohio, 24 How. 66. Although the state is not liable to be sued, yet an injunction will lie against its agents, to restrain the execution of an unconstitutional law.

Osborne v. Bank of the U. S. 9 Wh. 739. A state, by becoming interested with others in a banking or trading corporation, or by owning all the capital stock, does not impart to that corporation any of its privileges or prerogatives; it lays down its sovereignty so far as respects the transactions of the corporation, and exercises no power or privileges in respect to those transactions not derived from the charter. Bank of U. S. v. Planters, Bank of Georgia, 9 Wh. 904; Bank of Kentucky v. Miston, 3 Pet. 431; Briscoe v. Bank of Kentucky, 11 Pet. 324; Louisville Railroad Co. v. Letson, 2 How. 497; Darrington v. Bank of Alabama, 13 How. 12; Curran v. Arkansas, 15 How. 309; and see, Cohens v. Virginia, 6 Wh. 264.

6. On the first Wednesday in December by act March 1, 1792.

7. Before the first Wednesday in January by act March 1, 1792.

7. On the second Wednesday in January by act March 1, 1792.

no person have such majority, then from the persons having the highest numbers, not exceeding three on the list voted for as President, the House of Representatives shall choose immediately, by ballot, the President.<sup>1</sup> But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

DEC. 12, 1803.  
2 Stat. 306.

### ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.<sup>2</sup>

Feb. 1, 1868.  
13 Stat., 567.

Slavery abolished within the U. S.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.<sup>3</sup>

Power of Congress to enforce abolition of slavery.

### ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of

June 16, 1866.  
14 Stat., 358.

Who are citizens of the U. S. and of the States

1. On a motion to discharge a defendant arrested upon a *capias ad respondendum*, by a marshal appointed by the president de facto of the United States, the court will not decide the question whether he has been duly elected to that office. *Peyton v. Brent*, 3 Cr. C. O. 424.

2. The emancipation of a native born slave, by the thirteenth amendment, removed the disability of slavery, and made him a citizen of the United States; subject, however, to any lawful restrictions imposed upon his right to vote, or other powers or privileges. *U. S. v. Rhodes*, 1 Ab. 28; *Turner's Case*, *Ibid.* 86. This amendment did not avoid

a contract for the sale of a slave, made before it took effect, and a state constitution declaring such a contract annulled, is itself void, and of no effect. *Osborn v. Nicholson*, 13 Wall. 654.

3. The act of April 9, 1866 (14 Stat. 27), known as the "civil rights" bill, is constitutional, and an appropriate method of exercising the power conferred on congress by this section. *U. S. v. Rhodes*, 1 Ab. 28; *Turner's Case*, *Ibid.* 86. A criminal proceeding is not to be considered as affecting a person within the meaning of § 3 of the civil rights act, who is a mere witness therein. *Bylew v. U. S.*, 13 Wall. 540.

JUNE 16, 1866.  
14 Stat. 358.

Apportionment  
of Representa-  
tives.

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.<sup>1</sup>

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Certain persons  
disqualified  
from holding  
office.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or giving aid or comfort to the

1. The power of granting exclusive rights when necessary and proper to effectuate a purpose which had in view the public good, has always been exercised by the state legislatures, and is not forbidden to them by either of the last three amendments to the constitution. The main purpose of these amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery. The first clause of the XIV. amendment defines citizenship of the United States and of the states, and thereby recognizes the distinction between citizenship of a state and of the United States. The second clause protects from hostile legislation of the states the privileges and immunities of citizens of the United States as distinguished from those of citizens of the states. The privileges and immunities of citizens of the United States are those which arise out of the nature of the general government, its constitution or the laws made in pursuance thereof; and these are placed by the XIV amendment under the protection

of Congress; but the privileges and immunities of citizens of the states, with these exceptions, embrace generally those fundamental rights for the security and establishment of which society is instituted; and they remain under the care of the state governments. *The Slaughter House Cases*, 16 Wall. 36; *Bradwell v. The State of Illinois*, 16 Wall. 130. The Indian tribes within the limits of the United States, and the several members of such tribes, while they adhere to and form a part of the tribes to which they belong, are not, within the meaning of the XIV amendment, subject to the jurisdiction of the United States; and therefore such Indians have not become citizens of the United States, by virtue of that amendment. *Rep. Sen. Jud. Com.*, by Mr. Sen. Carpenter, Dec. 14, 1870. See, 1 *Dillon*, 348, note. The Indian tribes within the territory of the United States are independent political communities, and a child of a member thereof, though born within the limits of the United States, is not a citizen thereof, because not born subject to its jurisdiction. *McKay v. Campbell*, 5 Am. L. T. 408, 8 C. 2 Sawyer.

enemies thereof. But Congress may by a vote of two-thirds of each House remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.<sup>1</sup>

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.<sup>2</sup>

1. The several states, notwithstanding this amendment, have the power to deny the right of suffrage to any citizens of the United States, on account of age, sex, place of birth, vocation, want of property or intelligence, neglect of civic duties, crime or other cause not specified in said amendment. *McKay v. Campbell*, 1 Sawyer, 375; U. S. v. Antony, 5 C. L. N. 462.

2. The power of congress over the subject of the

right to vote in the several states, is conferred by the XV. amendment, and is confined to the enforcement of such amendment, by preventing the states from discriminating between citizens of the United States, in the matter of the right to vote, on account of race, color, or previous condition of servitude. *McKay v. Campbell*, 1 Sawyer, 375; U. S. v. Antony, 5 C. L. N. 462.

JUNE 16, 1866.  
14 Stat. 358.

Removal of disability.

The validity of the national debt not to be questioned.

Certain debts not to be assumed or paid.

Power of Congress to enforce this article.

Feb. 27, 1860.  
15 Stat. 346.  
Right to vote.

Power of Congress to enforce this article.



## NATURALIZATION OF ALIENS.

LAWS OF THE UNITED STATES IN RELATION THERETO.

APR. 14, 1802, §1 -  
2 Stat. 153.Conditions of  
naturalization.Declaration of  
intention.

SECTION 1. That any alien,<sup>1</sup> being a free white<sup>2</sup> perso may be admitted to become a citizen of the United Stat or any of them, on the following conditions, and not othe wise:—

*First.* That he shall have declared, on oath or affirmatio before the supreme, superior, district or circuit court of son one of the states,<sup>4</sup> or of the territorial districts of the Unite States, or a circuit or district court of the United State three years<sup>5</sup> at least before his admission, that it was *bon fide* his intention to become a citizen of the United State and to renounce forever all allegiance and fidelity to ar foreign prince, potentate, state or sovereignty, whateve and particularly by name,<sup>6</sup> the prince, potentate, state ( sovereignty whereof such alien may, at the time, be a cit zen or subject.

1. Intimately connected with the subject of naturalization, is, what is usually denominated the right of expatriation. It is the doctrine of the English law, that natural born subjects owe an allegiance which is intrinsic and perpetual, and which cannot be divested by any act of their own. The question has been frequently discussed in the courts of the United States, but it remains to be definitely settled by judicial decision. The better opinion, however, would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law; and that, as there is no existing regulation in the cases, the rule of the English common law remains unaltered. See, *Talbot v. Johnson*, 3 Dall. 133; *S. C. Bee*, 25; *U. S. v. Williams*, 4 Hall, L. J. 461; *Whart. St. Tr.* 652; *Murray v. The Charming Betsy*, 2 Cr. 120; *U. S. v. Gilles*, Pet. C. O. 159 *The Santissima Trinidad*, 7 Wh. 347; *Ingalls v. Trustees of the Sailors' Snug Harbor*, 3 Pet. 99; *Shanks v. Dupont*, 3 Pet. 242; 2 Kent, Com. 45; 2 *Story's Com.*, § 1,104, note; *Wheaton's international law*, 122, note; *Stoughton v. Taylor*, 2 Pa. 652. Birth and allegiance are simultaneous, citizens within the meaning of the constitution and laws, are free inhabitants, born in the United States,

or who have been naturalized by an act of congress *U. S. v. Rhodes*, 1 Ab. 40. An American citizen domiciled in a foreign country, who has taken a oath of allegiance to the foreign sovereign, is not under the protection of the United States. *The Charming Betsy*, 2 Cr. 64.

2. See, *infra* § 18, as to persons of African nativity or descent.

3. A married woman may be naturalized. *Ex parte Pic*, 1 Cr. O. C. 372. And that, without the concurrence of her husband. *Priest v. Cummings* 16 Wend. 617. See, also, *infra* § 16. But the statutes of naturalization do not apply to Indians. *Opin.* 746. And see, *Dred Scott v. Sandford*, 16 How. 405.

4. Congress having prescribed a uniform rule of naturalization, may give to the state courts jurisdiction under it. *State v. Penny*, 5 Eng. 621. And to the territorial courts. *Biddie v. Richard*, Cl. & Hall, 407. But see, *Ex parte Knowles*, 4 Am. L. B. 598, 5 Cal. 300; *Hayden v. Dudley*, 10 Law Rep. 371.

5. Now two years: See *infra* § 12.

6. An omission of the name of the sovereign will not invalidate the declaration. *Ex parte Smith*, 8 Blackf. 395.

*Secondly.* That he shall, at the time of his application,<sup>1</sup> to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.<sup>2</sup>

<sup>1</sup> APR. 14, 1802, §1  
2 Stat., 153.  
Oath of applicant for naturalization.

Record.

*Thirdly.* That the court admitting such alien shall be satisfied that he has resided<sup>3</sup> within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.<sup>4</sup> *Provided*, That the oath of the applicant shall, in no case, be allowed to prove his residence.

Proof.

Residence not to be proved by oath of applicant.

*Fourthly.* That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court; *Provided*, That no alien who shall be a native citizen, denizen or subject of any country, state or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States;<sup>5</sup> *Provided also*, That any alien who was residing within the limits, and under the jurisdiction of the United States, before the 29th day of January, 1795, may be admit-

Renunciation of foreign title.

Alien enemies excepted.

Alien residents prior to 1795, how naturalized

1. It is not sufficient that he took the oaths at the time of making his declaration. *Richards v. McDaniel*, 2 N. & M., 351.

2. It is not necessary that the record of naturalization should show all the legal perquisites were complied with, the judgment being conclusive of such compliance. *Stark v. Chesapeake Ins. Co.* 7 Cr. 420. *Spratt v. Spratt*, 4 Pet. 408. *Ritchie v. Putnam*, 18 Wend. 524. See *Campbell v. Gordon*, 6 Cr. 176. A certificate of naturalization irregularly obtained may be set aside. *Richards v. McDaniel*, 2 N. M. 351. Naturalization cannot be proved by parol. *Stade v. Minor*, 2 Cr. C. 139. *Price v. Barber*, 13 Leg. Int. 140.

3. Under this act these five years residence must have been uninterrupted. *Ex parte Wilson*, 1 Cr.

C. C. 186. *Ex parte Sanderson*, *Ibid.*, 219. But this is now altered by the act of June 26, 1848. See § 14. And see, *Ex parte Pasquatt*, 1 Cr. C. C. 243.

4. The residence and good moral character of the applicant cannot be established by affidavits; but must be proved in court by the testimony of witnesses. *Anon.* 7 Hill, 137. The powers conferred upon the courts to naturalize aliens, are judicial, and not ministerial, and require an examination into each case, sufficient to satisfy the court. In the matter of *Clark*, 18 Barb. 444.

5. An alien enemy cannot be permitted to make the preparatory declaration. *Ex parte Newman*, 2 Gall. 11. See *ex parte Overington*, 5 Binn. 371. *Case of Little*, 2 Brown, 218.

APR. 14, 1802, §1  
2 Stat. 153.

ted to become a citizen on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held;<sup>1</sup> and on his declaring, on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof; *And provided also*, That any alien who was residing within the limits, and under the jurisdiction of the United States at any time between the said 29th day of January, 1795, and the 18th day of June, 1798, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

Alien residents  
between 1795  
and 1798.

Ibid. §3.

What court may  
naturalize  
aliens.

SEC. 2. *And whereas*, doubts have arisen whether certain courts of record in some of the states, are included within the description of district or circuit courts; *Be it further enacted*, That every court of record in any individual state, having common law jurisdiction, and a seal and clerk or prothonotary,<sup>2</sup> shall be considered as a district court within the meaning of this act, and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if

1. A deposition that the deponents have known the applicants "since the year 1793 in New York," is not evidence that he was residing in the U. S. before the 29 of January, 1795. *Ex parte Tucker* 1 Cr. C. C. 89.

2. A court of record without any clerk or prothonotary, or other recording officer, distinct from the judge, is not competent to receive an alien's preliminary declaration. *Ex parte Cregg* 2 Curt. C. C. 98.

he had been naturalized in a district or circuit court of the United States. APR. 14, 1802, §4  
2 Stat., 153.

SEC. 3. The children of persons duly naturalized, under any of the laws of the United States,<sup>1</sup> or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling<sup>2</sup> in the United States, be considered as citizens of the United States,<sup>3</sup> and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States; *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States; *Provided also*, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted as a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed. Minor children of naturalized persons to be citizens.  
Exceptions.

SEC. 4. All acts heretofore passed respecting naturalization, be, and the same are hereby repealed. Ibid. § 5.

SEC. 5. That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, at any time between the 18th day of June 1798, and the 17th day of April 1802, and who has continued to reside within the same,<sup>4</sup> may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled "An Act to establish a uniform rule of naturalization; and to repeal the acts heretofore passed on that subject." Mar. 26, 1804, §1  
Previous declaration dispensed with in certain cases.

SEC. 6. When any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the direction prescribed in the second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United Ibid. §2.  
Widow and children, how naturalized.

1. This act is prospective in its operation, and applies to subsequent as well as precedent naturalization. *West v. West*, 8 Paige, Ch. 433.

2. It is sufficient that the minors were residents of the United States at the time of the passage of the act. *Campbell v. Gordon*, 6 Cr. 177. *Vint v. Heirs of King*, 2 Am. L. R. 713.

3. The naturalization of a father, ipso facto, makes his son, then residing in the U. S., and under twenty-one years of age, a citizen. *State v. Pennery*, 5 Eng. 621.

4. Under this act five years continued residence was necessary. *Ex parte Walton*, 1 Cr. C. C. 186. *Ex parte Sanderson*, 1 Cr. C. C. 219.

MAR. 3, 1813, § 12  
2 Stat., 811.

Residence for  
five years.

States, and shall be entitled to all rights and **privileg** such, upon taking the oaths prescribed by law.<sup>1</sup>

SEC. 7. That no person who shall arrive in the United States, from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States who shall not for the continued next term of five years preceding his admission as aforesaid have resided in the United States [without being at any time during the said five years out of the territory of the United States.]<sup>2</sup>

Mar. 22, 1816, § 2  
3 Stat., 259.

When previous  
declaration is  
dispensed with.

SEC. 8. Nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the 18th day of June, 1798, and the 14th day of April, 1802,<sup>3</sup> and who having continued to reside therein without having made a declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the 26th of March, 1804, entitled "An act in addition to an act, entitled An act to establish a uniform rule of naturalization, and to repeal the act heretofore passed on that subject." Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States, before the 14th day of April, 1802, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application shall be proved by the oath of affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court, admitting the applicant: otherwise the same shall not en-

1. They cannot be permitted to take the oaths, if their native sovereign is then at war with the United States. *Ex parte Overington*, 5 Binn. 371.

2. Clause within brackets, repealed. See, *infra* § 14, and § 13 of this act providing for the punish-

ment of crimes committed against the naturalization laws repealed and superseded by §§ 1, 2 and 3 of the act of July 14, 1870. *U. S. v. Tynen*, 11 Wall. 88.

3. *O'Brien v. Woody*, 4 McLean, 76.

title him to be considered and deemed a citizen of the United States. MAR. 22, 1816, §2  
3 Stat., 269.

SEC. 9. That any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years,<sup>1</sup> and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition, three years previous to his admission; *Provided*, Such alien shall make the declaration therein at the time of his or her admission; and shall further declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization. May 26, 1824, §1  
4 Stat., 69.  
How persons  
may be natural-  
ized.

SEC. 10. That the declaration required by the first condition specified in the first section of the act, to which this is in addition, shall, if the same has been *bona fide* made before the clerks of either of the courts in the said condition named, be valid as if it had been made before the said courts respectively.<sup>2</sup> Ibid. §3.  
Declaration of  
intention, how  
made.

SEC. 11. That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; anything in the said act, or in any subsequent act to the contrary notwithstanding. Ibid. §4.  
Declaration,  
when sufficient.

SEC. 12. That any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the 14th day of April, 1802, and the 18th day of June, 1812, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous May 24, 1828, §2  
4 Stat. 310.  
When declara-  
tion dispensed  
with.

1. This act only applies to those persons who were minors at the time of their arrival in the United States. *Matter of Bramlee*, 4 English 191.

2. The provisions of this section apply to future, no less than past cases. *Butterworth's Case*, 1 W. & M. 323.

MAY 24, 1828, §2  
4 Stat., 310.

What to be  
proved in such  
cases.

declaration of his intention to become a citizen; *Provided*, That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the 18th day of June, 1812, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the name of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle them to be considered and deemed a citizen of the United States.

June 28, 1848, §1  
9 Stat., 240.

Residence.

SEC. 13. That the last clause of the 12th section of the act hereby amended, consisting of the following words, to-wit: "without being at any time during the said five years out of the territory of the United States," be, and the same is hereby repealed.<sup>1</sup>

Feb. 10, 1855, §1  
10 Stat., 604.

Children of citizens born out of the U. S.

SEC. 14. That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States; *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

Ibid. §2.

Married women when deemed citizens.

SEC. 15. That any woman who might lawfully be naturalized under existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.<sup>2</sup>

Jul. 17, 1862, §21  
12 Stat., 597.

Aliens serving in the army.

SEC. 16. That any alien, of the age of twenty-one years and upward, who has enlisted or shall enlist in the armies,<sup>3</sup>

1. See, *infra*, § 7.

2. By this act, "whenever a woman, who under previous acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes, by

that fact, a citizen also. His citizenship, whenever it exists, confers, under the act, citizenship upon her." *Kelly v. Owen*, 7 Wall., 498.

3 This act does not include persons who have only served in the navy or marine corps. In re *Robert Bailey*, 2 Sawyer.

of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States, as aforesaid.

JUL. 17, 1862, §21  
12 Stat., 597.

SEC. 17. That the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent.

JUL. 14, 1870, §7  
16 Stat., 256.  
Africans.

SEC. 18. That all persons born in the district of country formerly known as the territory of Oregon, and subject to the jurisdiction of the United States at this time, are citizens of the United States in the same manner as if born elsewhere in the United States.

MAY 18, 1872, §1  
17 Stat., 134.  
Persons born in  
the territory of  
Oregon.

SEC. 19. That every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States, subsequent to the date of such declaration, may, on his application in any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall after his declaration to become a citizen of the United States, and shall have served said three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, anything to the contrary in any previous act of congress to the contrary notwithstanding; but such seaman shall, for all purposes of protection, as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

JUNE 7, 1872, §29  
17 Stat., 268.  
Aliens serving  
on American  
ships.



# CONSTITUTION

## OF THE STATE OF OREGON.<sup>1</sup>

SEPT. 18, 1857.  
Preamble. WE, the people of the State of Oregon, to the end that justice be established, order maintained, and liberty perpetuated, do ordain this constitution.

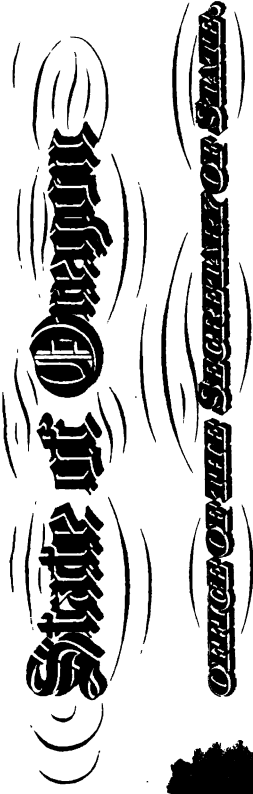
### ARTICLE I.

#### BILL OF RIGHTS.

- |                                   |  |
|-----------------------------------|--|
| Principles of the social compact. | 1. We declare that all men, when they form a social compact, are equal in rights; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have all times a right to alter, reform, or abolish the government in such manner as they may think proper. |
| Religious worship.                | 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.   |
| Religious opinion.                | 3. No law shall in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.  |
| Religious test.                   | 4. No religious test shall be required as a qualification for any office of trust or profit.   |
|                                   | 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall  |

1. This constitution was framed by a convention of delegates, 60 in number, chosen at the general election on the first Monday in June, 1857, by virtue of an act of the territorial assembly, passed December 12, 1856. The convention met at Salem, on the third Monday in August, 1857, and adjourned September 18, the same year. The convention provided for submitting the constitution to a vote of the electors of the territory on November 9, 1857,

at which election the constitution was adopted; there being 7,195 votes for it and 3,195 votes against it. On February 14, 1859, the act admitting Oregon into the Union with this constitution, was approved, from which time it is deemed to have become a state. From the time of the formation of the constitution, until the admission, the territorial government continued in full force and authority.



*Salem,* Dec. 27, 1897. *18*

H. P. KINGMAN, Secretary of State.

Milo Roy Maltbie,

Secretary Reform Club,

52 William Street, New York.

Dear Sir:

Replying to your inquiry of December 18th I will say that the Constitution of Oregon is not printed in separate pamphlet

form for distribution. It is, however, contained in some election laws of Oregon, two copies of which are this day forwarded to you. There will be no change in the Constitution for at least four years from the present time.

Yours very respectfully,

*W. R. Vinland*

C.F.M.

Secretary of State.

any money be appropriated for the payment of any religious services in either house of the legislative assembly. SEPT. 18, 1857.

6. No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief, to affect the weight of his testimony. Witnesses.

7. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered. Oath or affirmation.

8. No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write or print freely on any subject whatever; but every person shall be responsible for the abuse of this right. Freedom of speech.

9. No law shall violate the right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized. Searches, seizures, and warrants.

10. No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in person, property or reputation. Courts not to be secret.

11. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offence shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. Rights of defendant.

12. No person shall be put in jeopardy twice for the same offence, nor be compelled in any criminal prosecution to testify against himself. Not to be tried twice for same crime.

13. No person arrested or confined in jail shall be treated with unnecessary rigor. Treatment of persons under arrest.

14. Offences, except murder and treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident or the presumption strong. Bail.

15. Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice. Punishment of crime.

SEPT. 18, 1887.

Excessive bail  
and fines.Power of jury in  
criminal cases.

Civil cases.

Private  
property taken  
for public uses.Imprisonment  
for debt.Exclusive privi-  
leges.What laws shall  
not be passed.How laws sus-  
pended.

Habeas corpus.

Treason, evi-  
dence of.Effect of convic-  
tion.

16. Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall be inflicted, but all penalties shall be proportioned to offence. In all criminal cases whatever, the jury shall have the right to determine the law and the facts, under the direction of the court, as to the law, and the right of trial, as in civil cases.

17. In all civil cases, the right of trial by jury shall remain inviolate.

18. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.<sup>1</sup>

19. There shall be no imprisonment for debt except in case of fraud or absconding debtors.<sup>2</sup>

20. No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

21. No ex post facto law, or law impairing the obligations of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution; provided that laws locating the capital of the State, locating county seats, and submitting town and corporate acts, other local and special laws, may take effect or not, upon the vote of the electors interested.

22. The operation of the laws shall never be suspended, except by the authority of the legislative assembly.

23. The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, or public safety require it.

24. Treason against the State, shall consist only in levying war against it, or adhering to its enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same act, or confession in open court.

25. No conviction shall work corruption of blood or forfeiture of estate.

1. Private property condemned to the use of a corporation, is taken for a public use, because the corporation is a public agent. A corporation has no right to the exclusive use of a right of way, that is not necessary and useful in its corporate business, and therefore such right of way may be taken for another corporation engaged in the same business. Or. Cas. R. Co. v. Bailey, 3 Or. 165.

2. The ordinary acceptance of the term "absconding debtor," includes an idea of secret flight. Norman v. Zeiber, 3 Or., 205. This clause is construed not to apply to an action for a tort or injury, but as if it read: "There shall be no imprisonment for debt arising upon contract express or implied," except, etc. U. S. v. Walsh, 11 285; Hanson v. Fowle, 1 Sawyer, 505.

26. No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for their common good; nor from instructing their representatives; nor from applying to the legislature for redress of grievances. SEPT. 18, 1857. Assemblages of the people.

27. The people shall have the right to bear arms for the defence of themselves and the State, but the military shall be kept in strict subordination to the civil power. The right to bear arms.

28. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in manner prescribed by law. Quartering soldiers.

29. No law shall be passed granting any title of nobility, or conferring hereditary distinctions. Titles of nobility.

30. No law shall be passed prohibiting emigration from the State. Emigration.

31. White foreigners who are or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment and descent of property as native born citizens. And the legislative assembly shall have power to restrain and regulate the immigration to this State of persons not qualified to become citizens of the United States. Rights of white foreigners. What immigration may be restrained.

32. No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly; and all taxation shall be equal and uniform.<sup>1</sup> Taxes and duties.

33. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people. Enumeration of rights, how construed.

34. There shall be neither slavery nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted. Prohibition of slavery.

35. No free negro or mulatto, not residing in this State at the time of the adoption of this constitution, shall come, reside or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such negroes and mulattoes, and for their effectual exclusion from the State, and for the punishment of persons who shall bring them into the State, or employ or harbor them.<sup>2</sup> Free negroes and mulattoes.

1. An assessment upon the lots and blocks abutting a street for the improvement thereof, is not contrary to the clause requiring "taxation to be equal and uniform." *King v. City of Portland*, 2 Or. 151.

2. This clause has been superseded and annulled by the XIV amendment to the national constitution. Ante p. 32.

SEPT. 18, 1857.

## ARTICLE II.

## SUFFRAGE AND ELECTIONS.

Elections free.  
Qualifications of  
electors.

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for this constitution, every white<sup>1</sup> male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election—and every white male of foreign birth of the age of twenty-one years and upwards, who shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law.

Idiotic, insane  
or convict.

SEC. 3. No idiot or insane person shall be entitled to the privileges of an elector; and the privilege of an elector shall be forfeited, by a conviction of any crime which is punishable by imprisonment in the penitentiary.<sup>2</sup>

Residence.

SEC. 4.<sup>3</sup> For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this State; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum, at public expense; nor while confined in any public prison.

Soldiers, sea-  
men or marines  
not to vote.

SEC. 5. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State in consequence of having been stationed within the same; nor shall any such soldier, seaman or marine have the right to vote.

Negro, China-  
men, &c.

SEC. 6. No negro, chinaman, or mulatto<sup>4</sup> shall have the right of suffrage.

1. The effect of the XV amendment to the national constitution, "is to deprive the provisions of the state constitution and the acts of the state legislature, restricting the exercise of the right of suffrage to white persons, of all legal force and efficacy." Wood v. Fitzgerald, 3 Or. 579.

2. A person convicted of a felony is not restored to the privileges of an elector by an unconditional pardon. Darrah v. Bird, 3 Or. 232; contra, Wood v. Fitzgerald, Id. 573.

3. This section does not prevent a person employed in the service of the United States or of the state from gaining a residence during such em-

ployment. Darrah v. Bird, 3 Or. 239; Wood v. Fitzgerald, Id. 572.

4. Negroes and mulattoes born or naturalized in the United States and subject to the jurisdiction thereof, by virtue of the XIV amendment are now citizens of the United States, and the state wherein they reside, and therefore by virtue of the XV amendment are entitled to the right of suffrage in this state, the same as white citizens; and the same is true of all persons, born or naturalized in the United States, and subject to the jurisdiction thereof. The Slaughter House Cases, 16 Wall. 36.

SEC. 7. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election. SEPT. 18, 1857.  
Bribery at elections.

SEC. 8. The legislative assembly shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting election, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult, and other improper conduct. Laws concerning elections.

SEC. 9. Every person who shall give or accept a challenge to fight a duel, or shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit. Duels.

SEC. 10. No person holding a<sup>1</sup> lucrative office or appointment under the United States, or under this State, shall be eligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted; provided that officers in the militia, to which there is attached no annual salary, and the office of postmaster, where the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative. Lucrative offices

SEC. 11. No person who may hereafter be a collector or holder of public money, shall be eligible to any office of trust or profit, until he shall have accounted for and paid over, according to law, all sums for which he may be liable. Collector, when ineligible to office.

SEC. 12. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment pro tempore shall not be reckoned a part of that term. Appointment pro tempore.

SEC. 13. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same; and no elector shall be obliged to do duty in the militia on any day of election, except in time of war, or public danger. When electors free from arrest, and militia duty

SEC. 14. General elections shall be held on the first Monday of June, biennially. General elections, when held

SEC. 15. In all elections by the legislative assembly, or by either branch thereof, votes shall be given openly, or viva voce, and not by ballot forever; and in all elections by Votes to be given viva voce.

1. A deputy collector of internal revenue, is such an office or appointment. *Herman's case*, | *Sen. Jour.* 1870, p.32. See note to Art. VII § 17.



SEPT. 18, 1857. the people, votes shall be given openly, or viva voce, and the legislative assembly shall otherwise direct.

**Plurality shall elect.** SEC. 16. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be declared duly elected.

**Electors.** SEC. 17. All qualified electors shall vote in the elector precinct in the county where they may<sup>1</sup> reside, for county officers, and in any county in the State for State officers or in any county of a congressional district in which such electors may reside, for members of congress.

### ARTICLE III.

#### DISTRIBUTION OF POWERS.

**Powers of government.** SECTION 1. The powers of the government shall be divided into three separate departments—the legislative, the executive, including the administrative, and the judicial and no person charged with official duties under one of these departments shall exercise any of the functions of another except as in this constitution expressly provided.

### ARTICLE IV.

#### LEGISLATIVE DEPARTMENT.

**Legislative authority.** SECTION 1. The legislative authority of the state shall be vested in the legislative assembly, which shall consist of a senate and house of representatives. The style of every bill shall be, "Be it enacted by the legislative assembly of the State of Oregon," and no law shall be enacted except by bill.

**Style of a bill.** SEC. 2. The senate shall consist of sixteen, and the house of representatives of thirty-four, members, which number shall not be increased until the year eighteen hundred and sixty, after which time the legislative assembly may increase the number of senators and representatives, always keeping, as near as may be, the same ratio as to the number of senators and representatives; *Provided*, That the senate shall never exceed thirty, and the house of representatives sixty members.

**Number of senators and representatives.** **By whom chosen.** SEC. 3. The senators and representatives shall be chosen

1. A person who has no fixed place of residence is not entitled to vote anywhere, and the mere passing in and out of a precinct does not constitute a residence therein. *Darragh v. Bird*, 3 Or. 233. Where an elector has in good faith resided in a

county ninety days next preceeding an election, "but has no fixed residence or domicile in any particular precinct therein, he may vote in any precinct in which he finds himself on the day of election." *Wood v. Fitzgerald*, 3 Or. 890.

by the electors of the respective counties or districts into SEPT. 18, 1857.  
which the State may from time to time be divided by law.

SEC. 4. The senators shall be elected for the term<sup>1</sup> of four Term of senators and representatives.  
years, and representatives for the term of two years from the day next after their general election; *Provided, however,* That the senators elect, at the first session of the legislative Senators, how classified.  
assembly under this constitution, shall be divided by lot into two equal classes, as nearly as may be; and the seats of senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of the increase of the number of senators, they shall be so annexed by lot to one or the other of the two classes as to keep them as nearly equal as possible.

SEC. 5. The legislative assembly shall, in the year eight-Census.  
teen hundred and sixty-five, and every ten years after, cause an enumeration to be made of all the white population of the State.

SEC. 6. The number of senators and representatives Apportionment.  
shall, at the session next following an enumeration of the inhabitants by the United States or this State, be fixed by law, and apportioned among the several counties according to the number of white population in each. And the ratio of senators and representatives shall be determined by dividing the whole number of white population of such county or district, by such respective ratios; and when a fraction shall result from such division, which shall exceed one-half of such ratio, such county or district shall be entitled to a member for such fraction. And in case any county shall not have the requisite population to entitle such county to a member, then such county shall be attached to some adjoining county for senatorial or representative purposes.

SEC. 7. A senatorial district, when more than one Senatorial districts.  
county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating senatorial districts.

SEC. 8. No person shall be a senator or representative Qualification of senators, etc.  
who, at the time of his election, is not a citizen of the United States; nor any one who has not been for one year next preceding his election an inhabitant of the county or

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1. A person elected to fill a vacancy in the office of senator, is not elected for the term of four years. | Mosher's case, Sen. Jour. 1872, p. 95.

<u>SEPT. 18. 1857.</u>	district whence he may be chosen. Senators or representatives shall be at least twenty-one years of age.
When free from arrest, etc.	SEC. 9. Senators and representatives in all cases, except for treason, felony, or breaches of the peace, shall be privileged from arrest during the session of the legislative assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the legislative assembly, nor during the fifteen days next before the commencement thereof. Nor shall a member, for words uttered in debate in either house, be questioned in any other place.
Words uttered in debate.	SEC. 10. The sessions of the legislative assembly shall be held biennially at the capital of the State, commencing on the second Monday of September, in the year eighteen hundred and fifty-eight, and on the same day of every second year thereafter, unless a different day shall have been appointed by law.
Sessions of the legislative assembly.	SEC. 11. Each house, when assembled, shall choose its own officers, judge of the election, qualifications and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor at any other place than that in which it may be sitting.
Election of officers.	SEC. 12. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day and compel the attendance of absent members. A quorum being in attendance, if either house fail to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the five days until an organization shall have been effected.
Judge of qualification of members, etc.	SEC. 13. Each house shall keep a journal of its proceedings. The yeas and nays on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; <i>Provided</i> , That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.
Quorum.	SEC. 14. The doors of each house, and of committees of the whole shall be kept open, except in such cases as in the opinion of either house may require secrecy.
Journal.	SEC. 15. Either house may punish its members for disorderly behavior, and may, with the concurrence of two-
Yeas and nays.	
Open doors.	
When session may be secret.	
Punishment and expulsion of member.	

thirds, expel a member; but not a second time for the same SEPT. 18, 1857.  
cause.

SEC. 16. Either house, during its session, may punish Punishment of person not a member.  
by imprisonment, any person not a member, who shall have  
been guilty of disrespect to the house by disorderly or con-  
temptuous behavior in its presence, but such imprisonment  
shall not at any time exceed twenty-four hours.

SEC. 17. Each house shall have all powers necessary for General powers.  
a branch of the legislative department of a free and indepen-  
dent State.

SEC. 18. Bills may originate in either house, but may Bill where to originate.  
be amended or rejected in the other, except that bills for  
raising revenue shall originate in the house of representa-  
tives.

SEC. 19. Every bill shall be read by sections, on three Reading of bills and vote on final passage.  
several days, in each house, unless, in case of emergency,  
two-thirds of the house where such bill may be depending,  
shall, by a vote of yeas and nays, deem it expedient to dis-  
pense with this rule; but the reading of a bill by sections  
on its final passage shall in no case be dispensed with, and  
the vote on the passage of every bill or joint resolution, shall  
be taken by yeas and nays.

SEC. 20. Every act shall embrace but one subject, and Subject and title of act.  
matters properly connected therewith, which subjects shall  
be expressed in the title.<sup>1</sup> But if any subject shall  
be embraced in an act which shall not be expressed in the  
title, such act shall be void only as to so much thereof as  
shall not be expressed in the title.

SEC. 21. Every act and joint resolution shall be plainly Act to be plainly worded.  
worded, avoiding as far as practicable, the use of technical  
terms.

SEC. 22. No act shall ever be revised or amended by Mode of revision or amendment.  
mere reference to its title, but the act revised or section  
amended, shall be set forth and published at full length.<sup>2</sup>

SEC. 23. The legislative assembly shall not pass special What local or special laws not to be passed.  
or local laws in any of the following enumerated cases, that  
is to say—

1. The object of this provision evidently was to prevent matters wholly foreign and disconnected from the subject expressed in the title from being inserted in the act. *Simpson v. Bailey*, 3 Or., 517.

2. Where an act or section thereof is revised or amended it is not necessary to set forth and pub-

lish such act or section only as revised or amended. *Noland v. Costello*, 2 Or. 58; *Portland v. Stock*, 1d. 72. A repeal of an act or section thereof is not a revision or amendment of the same, and therefore is not within this clause. *Bird v. Wasco*, 3 Or. 284.

SEPT. 18, 1827.

1. Regulating the jurisdiction and duties of justice the peace, and of constables;<sup>1</sup>
2. For the punishment of crimes and misdemeanors
3. Regulating the practice in courts of justice;
4. Providing for changing the venue in civil and criminal cases;
5. Granting divorces;
6. Changing the names of persons;
7. For laying, opening and working on highways, and for the election or appointment of supervisors;
8. Vacating roads, town plats, streets, alleys, and public squares;
9. Summoning and empanelling grand and petit jurors
10. For the assessment and collection of taxes for State, county, township or road purposes;
11. Providing for supporting common schools, and for the preservation of school funds;
12. In relation to interest on money;
13. Providing for opening and conducting the election of State, county, or township officers, and designating the places of voting;
14. Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities by executors, administrators, guardians or trustees;

Suit against the State.

SEC. 24. Provision may be made by general law for bringing suit against the State, as to all liabilities originating after or existing at the time of the adoption of this constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

Majority necessary to pass a bill.

Bill to be signed by speaker.

Protest.

SEC. 25. A majority of all the members elected to each house shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the presiding officers of the respective houses.

SEC. 26. Any member of either house shall have the right to protest, and have his protest, with his reasons for dissent, entered on the journal.

What statute a public law.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

When act to take effect.

SEC. 28. No act shall take effect until ninety days from the end of the session at which the same shall have been

1. This clause does not prevent the legislature from conferring upon the judge of a municipal court the power and authority of a justice of the

peace within the municipal limits. *Ryan v. Harris* 2 Or. 176; *Craig v. Mosier*, Id. 324; *State v. Wiley*, Res. Laws 1872, p. 421.

passed, except in case of emergency; which emergency shall SEPT. 18, 1857.  
be declared in the preamble or in the body of the law.

SEC. 29. The members of the legislative assembly shall Compensation of members.  
receive for their services a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate one hundred and twenty dollars for per diem allowance for any one session. When convened in extra session by the Governor, they shall receive three dollars per day; but no extra session shall continue for a longer period than twenty days. They shall also receive the sum of three dollars for every twenty miles they shall travel in going to and returning from their place of meeting, on the most usual route. The presiding officers of the assembly shall, in virtue of their office, receive an additional compensation equal to two-thirds of their per diem allowance as members.

SEC. 30. No senator or representative shall, during the When member not eligible to office.  
time for which he may have been elected, be eligible to any office, the election to which is vested in the legislative assembly; nor shall be appointed to any civil office of profit which shall have been created, or the emoluments of which shall have been increased during such term, but this latter provision shall not be construed to apply to any officer elective by the people.

SEC. 31. The members of the legislative assembly shall, Oath of members.  
before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States, and the constitution of the State of Oregon, and that I will faithfully discharge the duties of senator (or representative, as the case may be), according to the best of my ability.

And such oath may be administered by the Governor, Secretary of State, or Judge of the Supreme Court.

## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SECTION 1. The chief executive power of the State shall Executive power.  
be vested in a Governor, who shall hold his office for the Term of office.  
term of four years; and no person shall be eligible to such office more than eight, in any period of twelve years.

SEC. 2. No person, except a citizen of the United States, Qualifications of Governor.  
shall be eligible to the office of Governor, nor shall any per-

SEPT. 18, 1857. son be eligible to that office who shall not have attained age of thirty years, and who shall not have been three years next preceding his election a resident within this State.

**Who not eligible** SEC. 3. No member of congress, or person holding office under the United States, or under this State, or under any other power, shall fill the office of Governor; except may be otherwise provided in this constitution.

**Election of governor.** SEC. 4. The Governor shall be elected by the qualified electors of the State at the times and places of choosing members of the legislative assembly, and the returns of every election for Governor shall be sealed up and transmitted to the Secretary of State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both houses of the legislative assembly.

**In case of a tie** SEC. 5. The person having the highest number of votes for Governor shall be elected; but in case two or more persons shall have an equal, and the highest number of votes for Governor, the two houses of the legislative assembly, at the next regular session thereof, shall forthwith, by joint vote, proceed to elect one of the said persons Governor.

**Contested election.** SEC. 6. Contested elections for Governor shall be determined by the legislative assembly in such manner as may be prescribed by law.

**Term of office.** SEC. 7. The official term of the Governor shall be four years, and shall commence at such times as may be provided by this constitution or prescribed by law.

**In case of vacancy or disability.** SEC. 8. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve upon the Secretary of State; and in case of the removal from office, death, resignation, or inability, both of the Governor and Secretary of State, the president of the senate shall act as Governor, until the disability be removed, or a Governor be elected.

**Governor, commander-in-chief** SEC. 9. The Governor shall be commander-in-chief of the military and naval forces of this State, and may call out such forces to execute the laws, to suppress insurrection, or to repel invasion.

**To take care that the laws are executed.** SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. He shall, from time to time, give to the legislative assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 12. He may, on extraordinary occasions, convene the legislative assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened. SEPT. 18, 1857.  
May convene the legislature.

SEC. 13. He shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative and military departments upon any subject relating to the duties of their respective offices. To transact all necessary business with officers.

SEC. 14. He shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislative assembly, at its next meeting, when the legislative assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the legislative assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reason for granting the same; and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted. May grant reprieves, pardons, etc.

SEC. 15. Every bill which shall have passed the legislative assembly, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which house shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively; if any bill shall not be returned by the Governor within five days (Sundays excepted), after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless Veto power.  
Reconsideration  
Vote to be by yeas and nays.



SEPT. 18, 1857. the Governor, within five days next after the adjournment (Sundays excepted) shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall return the same before the legislative assembly at its next session in like manner as if it had been returned by the Governor.

Governor to fill vacancies by appointment.

SEC. 16. When, during a recess of the legislative assembly, a vacancy shall happen in any office, the appointment of which is vested in the legislative assembly, or when at any time a vacancy shall have occurred in any other State office, or in the office of judge of any court, the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.<sup>1</sup>

Issue writs of election.

SEC. 17. He shall issue writs of election to fill such vacancies as may have occurred in the legislative assembly.

Commissions.

SEC. 18. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the seal of the State, and attested by the Secretary of State.

## ARTICLE VI.

### ADMINISTRATIVE DEPARTMENT.

Election of Secretary and treasurer of State.

SECTION 1. There shall be elected by the qualified electors of the State, at the time and places of choosing members of the legislative assembly, a Secretary and Treasurer of State, who shall severally hold their offices for the term of four years; but no person shall be eligible to either of said offices more than eight, in any period of twelve years.

Secretary of State.

SEC. 2. The Secretary of State shall keep a fair record of the official acts of the legislative assembly and executive department of the State; and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislative assembly. He shall be, by virtue of his office, auditor of public accounts, and shall perform such other duties as shall be assigned him by law.

Seal of State.

SEC. 3. There shall be a seal of State, kept by the Secretary of State for official purposes, which shall be called "The seal of the State of Oregon."

Power and duties of treasurer.

SEC. 4. The power and duties of the Treasurer of State shall be such as may be prescribed by law.

Office and records of executive officers.

SEC. 5. The Governor, and the Secretary, and Treasurer of State, shall severally keep the public records, books and

1. In case of a vacancy in the office of county judge, the appointment by the governor is not for any unexpired term, but until a successor is elected and qualified, which may be done at the next gen-

eral election; and the person then chosen is entitled to hold the office for the term of four years thereafter. State ex rel. v. Johns, 3 Or. 534.

papers, in any manner relating to their respective offices, at <sup>SEPT. 18, 1887.</sup> the seat of government, at which place also the Secretary of State shall reside.

SEC. 6. There shall be elected in each county, by the <sup>County officers.</sup> qualified electors thereof, at the time of holding general elections, a County Clerk, Treasurer, Sheriff, Coroner, and Surveyor, who shall severally hold their offices for the term of two years.

SEC. 7. Such other county, township, precinct, and city <sup>Other officers.</sup> officers as may be necessary, shall be elected or appointed in such manner as may be prescribed by law.

SEC. 8. No person shall be elected or appointed to a <sup>Qualification of county officers.</sup> county office who shall not be an elector of the county; and all county, township, precinct and city officers shall keep their respective offices at such places therein, and perform such duties as may be prescribed by law.

SEC. 9. Vacancies in county, township, precinct and city <sup>Vacancies.</sup> offices shall be filled in such manner as may be prescribed by law.

## ARTICLE VII.

### JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be ves- <sup>Judicial power of the State, in whom vested.</sup> ted in a supreme court, circuit courts, and county court, which shall be courts of record, having general jurisdiction, to be defined, limited, and regulated by law in accordance with this constitution. Justices of the peace may also be invested with limited judicial powers;<sup>1</sup> and municipal courts<sup>2</sup> <sup>Municipal court</sup> may be created to administer the regulations of incorporated towns and cities.

SEC. 2. The supreme court shall consist of four justices,<sup>3</sup> <sup>Supreme court.</sup> to be chosen in districts by the electors thereof, who shall be citizens of the United States, and who shall have resided in the State at least three years next preceding their election, and after their election, to reside in their respective districts. The number of justices and districts may be in <sup>Justices of.</sup> creased, but shall not exceed five, until the white population of the State shall amount to one hundred thousand, and shall never exceed seven; and the boundaries of districts may be

1. Whether the jurisdiction of a justice of the peace shall be limited to \$100 or \$250, is left by this clause to the discretion of the legislature. *Noland v. Costello*, 2 Or. 58.

2. The legislature may confer upon the judge of a municipal court the power and authority of a

justice of the peace. *Ryan v. Harris*, 2 Or. 176; *Craig v. Mosier*, Id. 324; *State v. Wiley*, *Ses. Laws* 1872, p. 421.

3. The number of justices of the supreme court was increased to five by act of the assembly, October 11, 1882.

- SEPT. 18, 1887.** changed, but no change of district shall have the effect to remove a judge from office, or require him to change residence without his consent.
- Term of office.** SEC. 3. The judges first chosen under this constitution shall allot among themselves their terms of office, so that the term of one of them shall expire in two years, one in four years, and two in six years, and thereafter one or more shall be chosen every two years, to serve for the term of six years.
- Vacancy.** SEC. 4. Every vacancy in the office of judge of the supreme court shall be filled by election for the remainder of the vacant term, unless it would expire at the next election, and until so filled, or when it would so expire, the Governor shall fill the vacancy by appointment.
- Who to be chief justice.** SEC. 5. The judge who has the shortest term to serve, or the oldest of several having such shortest term, and not holding by appointment, shall be the chief justice.
- Jurisdiction.** SEC. 6. The supreme court shall have jurisdiction only to revise the final decisions of the circuit courts; and every cause shall be tried, and every decision shall be made by those judges only, or a majority of them, who did not try the cause or make the decision in the circuit court.
- Terms of supreme court.** SEC. 7. The terms of the supreme court shall be appointed by law; but there shall be one term at the seat of government annually. And at the close of each term the Judges shall file with the Secretary of State, concise written statements of the decisions made at that term.
- Circuit courts.** SEC. 8. The circuit court shall be held twice, at least, in each year, in each county organized for judicial purposes, by one of the justices of the supreme court, at times to be appointed by law; and at such other times as may be appointed by the judges severally, in pursuance of law.
- Jurisdiction.** SEC. 9. All judicial power, authority and jurisdiction not vested by this constitution, or by laws consistent therewith exclusively in some other court, shall belong to the circuit courts; and they shall have appellate jurisdiction and supervisory control over the county courts, and all other inferior courts, officers and tribunals.
- When supreme and circuit judges may be elected in distinct classes.** SEC. 10. When the white population of the State shall amount to two hundred thousand, the legislative assembly may provide for the election of supreme and circuit judges in distinct classes, one of which classes shall consist of three justices of the supreme court, who shall not perform circuit duty, and the other class shall consist of the necessary

number of circuit judges, who shall hold full terms with-<sup>SEPT. 18, 1857.</sup>  
out allotment, and who shall take the same oath as the su-<sup>Duties of.</sup>  
preme judges.

SEC. 11. There shall be elected in each county, for the <sup>County court.</sup>  
term of four years a county judge, who shall hold the  
county court at times to be regulated by law.<sup>1</sup>

SEC. 12. The county court shall have the jurisdiction <sup>Jurisdiction.</sup>  
pertaining to probate courts, and boards of county com-  
missioners, and such other powers and duties, and such  
civil jurisdiction not exceeding the amount of value of five  
hundred dollars, and such criminal jurisdiction not extend-  
ing to death or imprisonment in the penitentiary as may be  
prescribed by law. But the legislative assembly may pro-  
vide for the election of two commissioners to sit with the <sup>Commissioners</sup>  
county judge whilst transacting county business in any or <sup>of county courts</sup>  
all the counties, or may provide a separate board for trans-  
acting such business.

SEC. 13. The county judge may grant preliminary in-  
junctions and such other writs as the legislative assembly <sup>Writs granted</sup>  
may authorize him to grant, returnable to the circuit court, <sup>by county judge</sup>  
or otherwise, as may be provided by law; and may hear  
and decide questions arising upon habeas corpus; *Provided,* <sup>Habeas corpus.</sup>  
Such decision be not against the authority or proceedings  
of a court or judge of equal or higher jurisdiction.

SEC. 14. The counties having less than ten thousand <sup>Expenses of</sup>  
white inhabitants shall be reimbursed, wholly or in part, for <sup>court in certain</sup>  
the salary and expenses of the county court, by fees, per <sup>counties.</sup>  
centage, and other equitable taxation of the business done  
in said court, and in the office of the county clerk.

SEC. 15. A county clerk shall be elected in each county <sup>Election of</sup>  
for the term of two years, who shall keep all the public <sup>county clerk, etc</sup>  
records, books and papers of the county, record convey-  
ances, and perform the duties of clerk of the circuit and  
county courts, and such other duties as may be prescribed  
by law; but whenever the number of voters in any county <sup>Legislature may</sup>  
shall exceed twelve hundred, the legislative assembly may <sup>divide the du-</sup>  
authorize the election of one person as clerk of the circuit <sup>ties of county</sup>  
court, one person as clerk of the county court, and one per-  
son recorder of conveyances.

SEC. 16. A sheriff shall be elected in each county for <sup>Sheriff.</sup>  
the term of two years, who shall be the ministerial officer

1. Under this section "the term attaches to the person," and any one elected a county judge is chosen for the full period of four years, and not merely to fill an unexpired portion of the four years for which a predecessor may have been chosen. State ex rel. v. Johns, 3 Or., 538.

- SEPT. 18, 1857.** of the circuit and county courts, and shall perform such other duties as may be prescribed by law.
- Prosecuting attorneys.** SEC. 17. There shall be elected by districts comprising of one or more counties, a sufficient number of prosecuting attorneys,<sup>1</sup> who shall be the law officers of the State, and the counties within their respective districts, and shall perform such duties pertaining to the administration of law and general police as the legislative assembly may direct.
- Jurors.** SEC. 18. The legislative assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors; and out of the whole number attending at the court, seven shall be chosen by lot as grand jurors, five of whom must concur to find an indictment. But the legislative assembly may modify or abolish grand juries.
- Official delinquencies.** SEC. 19. Public officers shall not be impeached; but in case of incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law.
- Removal of judges.** SEC. 20. The Governor may remove from office a judge of the supreme court, or prosecuting attorney, upon the joint resolution of the legislative assembly, of which two thirds of the members elected to each house shall concur for incompetency, corruption, malfeasance or delinquency in office, or other sufficient cause stated in such resolution.
- Oath of office.** SEC. 21. Every judge of the supreme court, before entering upon the duties of his office, shall take and subscribe, and transmit to the Secretary of State, the following oath:
- "I, ———, do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Oregon; and that I will faithfully and impartially discharge the duties of a judge of the supreme and circuit courts of said State, according to the best of my ability, and that I will not accept any other office except judicial offices, during the term for which I have been elected."

## ARTICLE VIII.

### EDUCATION AND SCHOOL LANDS.

**Superintendent of public instruction.** SECTION 1. The Governor shall be superintendent of public instruction, and his powers and duties in that capacity shall

1. The duties of the office of prosecuting attorney and United States district attorney are incompatible, and the acceptance of the latter by a person holding the former will be deemed a resignation thereof. State ex rel. v. Gibbs. Or. Sup. Court, Jan. Term, 1873.

be such as may be prescribed by law; but after the term of SEPT. 18. 1857. five years from the adoption of this constitution, it shall be competent for the legislative assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his powers and duties.

SEC. 2. The proceeds of all the lands which have been Common school fund. or hereafter may be granted to this State, for educational purposes (excepting the lands heretofore granted to and (aid) in the establishment of a university), all the moneys and clear proceeds of all property which may accrue to the State by escheat or forfeiture; all moneys which may be paid as exemption from military duty; the proceeds of all gifts, devices and bequests, made by any person to the State for common school purposes; the proceeds of all property granted to the State when the purposes of such grant shall not be stated; all the proceeds of the five hundred thousand acres of land to which this State is entitled by the provisions of an act of congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights, approved September 4, 1841," and also the five per centum of the net proceeds of the sales of the public lands, to which this State shall become entitled on her admission into the Union (if congress<sup>1</sup> shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate and irreducible fund, to be called the common school fund, the interest of which, together with all other revenues derived from the school land mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

SEC. 3. The legislative assembly shall provide by law System of common schools. for the establishment of a uniform and general system of common schools.

SEC. 4. Provision shall be made by law for the distribu- Distribution of school fund. tion of the income of the common school fund among the several counties of the State, in proportion to the number of children resident therein between the ages of four and twenty years.

1. On February 9, 1871, congress passed a joint resolution assenting to such appropriation as follows:—Joint Resolution relative to school lands in the State of Oregon. Be it enacted, etc. That Congress hereby assents to the application of the 500,000 acres of land granted to the State of Oregon by the act of Congress, approved September 4, 1841,

to the support of common schools, as provided in § 2 Article 8 of the Constitution of said State; *Provided*, That nothing herein shall influence the construction or effect of the act admitting said state into the Union, as to said application (16 Stat. 595).

SEPT. 18, 1857.  
Sale of school  
lands.

SEC. 5. The Governor, Secretary of State, and State Treasurer, shall constitute a board of commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom, and their powers and duties shall be such as may be prescribed by law; *Provided*, That no part of the university funds, or of the interest arising therefrom, shall be expended until the period of ten years from the adoption of this constitution, unless the same shall be otherwise disposed of by the consent of congress for common school purposes.

## ARTICLE IX.

### FINANCE.

Assessment and  
taxation.

SECTION 1. The legislative assembly shall provide by law for uniform and equal rate of assessment and taxation;<sup>1</sup> and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

Current expenses.

SEC. 2. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the interest on the State debt, if there be any.

Law levying tax

SEC. 3. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

How money  
drawn.

SEC. 4. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

Publication.

SEC. 5. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislative assembly.

Tax for deficiency.

SEC. 6. Whenever the expenses of any fiscal year shall exceed the income, the legislative assembly shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year.

Appropriations.

SEC. 7. Laws making appropriations for the salaries of public officers and other current expenses of the State, shall contain provisions upon no other subject.

Stationery—how  
furnished.

SEC. 8. All stationery required for the use of the State, shall be furnished by the lowest responsible bidder, under

1. An assessment upon the lots and blocks abutting a street for the improvement thereof is not unequal and ununiform assessment and taxation. *King v. Portland*, 2 Or. 151.

such regulations as may be prescribed by law.. But no State officer, or member of the legislative assembly, shall be interested in any bid or contract for furnishing such stationery. SEPT. 18, 1857.

## ARTICLE X.

### MILITIA.

SECTION 1. The militia of this State shall consist of all able-bodied male citizens between the ages of eighteen and forty-five years, except such persons as now are or hereafter may be exempted by the laws of the United States or of this State. Militia.

SEC. 2. Persons whose religious tenets or conscientious scruples forbid them to bear arms, shall not be compelled to do so in time of peace, but shall pay an equivalent for personal service. Who exempt.

SEC. 3. The Governor shall appoint the Adjutant General and the other chief officers of the general staff, and his own staff, and all officers of the line shall be elected by the persons subject to military duty in their respective districts. Officers.

SEC. 4. The majors-general, brigadiers-general, colonels or commandants of regiments, battalions, or squadrons, shall severally appoint their staff officers, and the Governor shall commission all officers of the line and staff ranking as such. Staff-officers. Governor to commission.

SEC. 5. The legislative assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and make all other needful rules and regulations in such manner as they may deem expedient, not incompatible with the constitution or laws of the United States, or of the constitution of this State, and shall fix the rank of all staff officers. Legislature to make regulations for militia.

## ARTICLE XI.

### CORPORATIONS AND INTERNAL IMPROVEMENTS.

SECTION 1. The legislative assembly shall not have the power to establish or incorporate any bank, or banking company, or moneyed institution whatever; nor shall any bank, company or institution exist in the State with the privilege of making, issuing, or putting into circulation any bill, check, certificate, promissory note, or other paper, or the paper of any bank, company, or person, to circulate as money. Prohibition of banks.



SEPT. 18, 1857.

Corporations to  
be formed un-  
der general lawsMunicipal  
corporation.Liability of  
stockholders.Compensation  
for property  
taken by corpo-  
ration.Restrictions up-  
on municipal  
corporations.State not to be a  
stock-holder in  
company.Credit of the  
state not to be  
loaned.Limitation upon  
the power of  
contracting  
debts.State not to as-  
sume county  
debts, unless.Municipal cor-  
porations.Limitation upon  
powers of coun-  
ties to contract  
debts.

SEC. 2. Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights.

SEC. 3. The stockholders of all corporations and joint stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid, and no more.

SEC. 4. No person's property shall be taken by any corporation, under authority of law, without compensation<sup>1</sup> being first made or secured, in such manner as may be prescribed by law.

SEC. 5. Acts of legislative assembly, incorporating towns and cities, shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.<sup>2</sup>

SEC. 6. The State shall not subscribe to, or be interested in, the stock of any company, association or corporation.

SEC. 7. The legislative assembly shall not loan the credit of the State, nor in any manner create any debts or liabilities, which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war, or to repel invasion, or suppress insurrection; and every contract of indebtedness entered into or assumed by or on behalf of the State, when all its liabilities and debts amount to said sum, shall be void and of no effect.

SEC. 8. The State shall never assume the debt of any county, town, or other corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

SEC. 9. No county, city, town, or other municipal corporation, by vote of its citizens, or otherwise, shall become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.

SEC. 10. No county shall create any debts or liabilities which shall singly, or in the aggregate, exceed the sum of

1. Compensation for property appropriated to the use of a corporation consists (1) of the actual value of the parcel appropriated, and (2) of the excess of damages, if any, to the residue of the property, over the benefits thereto, by reason of such appropriation. *Wallamet Falls L. & Co. v. Kelly, Or., 101.*

2. § 136 of the act incorporating Portland pro-

hibited the city from contracting an indebtedness exceeding \$50,000; *Held*, That an ordinance assuming a liability of \$350,000, to be paid in semi-annual installments in the course of twenty years, although it provided for the payment of such installments by the levy of taxes as they fell due, was in violation of such section and void. *Coulson et ux v. Portland, 1 Deady, 496.*

five thousand dollars, except to suppress insurrection, or repel invasion; but the debts of any county, at the time of this constitution takes effect, shall be disregarded in estimating the sum to which such county is limited. SEPT. 18, 1857.

## ARTICLE XII.

### STATE PRINTER.

SECTION 1. There shall be elected by the qualified electors of the State, at the times and places of choosing members of the legislative assembly, a State printer, who shall hold office for the term of four years. He shall perform all the public printing for the State, which may be provided by law. The rates to be paid to him for such printing shall be fixed by law, and shall neither be increased nor diminished during the term for which he shall have been elected. He shall give security for the performance of his duties as the legislative assembly may provide. State printer.

## ARTICLE XIII.

### SALARIES.

SECTION 1. The governor shall receive an annual salary of fifteen hundred dollars. The Secretary of State shall receive an annual salary of fifteen hundred dollars. The Treasurer of State shall receive an annual salary of eight hundred dollars. The judges of the supreme court shall each receive an annual salary of two thousand dollars. They shall receive no fees or perquisites whatever for the performance of any duties connected with their respective offices; and the compensation of officers, if not fixed by this constitution, shall be provided by law. Salaries of state officers.

## ARTICLE XIV.

### SEAT OF GOVERNMENT.

SECTION 1. The legislative assembly shall not have power to establish a permanent seat of government for this State. But at the first regular session after the adoption of this constitution, the legislative assembly shall provide by law for the submission to the electors of this State at the next general election thereafter, the matter of the selection of a place for a permanent seat of government; and no Seat of government--location of.

- SEPT. 18, 1887. place shall ever be the seat of government under such law, which shall not receive a majority of all the votes cast on the matter of such election.<sup>1</sup>
- State house. SEC. 2. No tax shall be levied, or money of the State expended, or debt contracted for the erection of a State house prior to the year eighteen hundred and sixty-five.
- Seat of government, how removed. SEC. 3. The seat of government, when established as provided in section one, shall not be removed for the term of twenty years from the time of such establishment; nor in any other manner than as provided in the first section of this article; *Provided*, That all the public institutions of the State, hereafter provided for by the legislative assembly, shall be located at the seat of government.
- Public institutions, location of.

## ARTICLE XV.

## MISCELLANEOUS.

- SECTION 1. All officers, except members of the legislative assembly, shall hold their offices until their successors are elected and qualified.
- Tenure of office. SEC. 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the legislative assembly shall not create any office, the tenure of which shall be longer than four years.
- Oath of officer. SEC. 3. Every person elected or appointed to any office under the constitution shall, before entering on the duties thereof, take an oath or affirmation to support the constitution of the United States, and of this State, and also an oath of office.
- Lotteries prohibited. SEC. 4. Lotteries, and the sale of lottery tickets, for any purpose whatever, are prohibited, and the legislative assembly shall prevent the same by penal laws.
- Property of married women. SEC. 5. The property and pecuniary rights of every married woman, at the time of marriage, or afterward acquired by gift, devise, or inheritance, shall not be subject

1. By act of October 19, 1860, the location of the seat of government was submitted to the popular vote at the next general election in June, 1862, and every general election thereafter, until "some one point" should receive a majority of all the votes cast, upon the question. At the election in 1862, no point received a majority of the votes. At the

election in 1864, Salem received 6,108 votes, Portland 3,864 votes, Eugene 1,588 votes and all other places 577 votes; Salem received 79 majority of the whole vote cast, whereupon Salem was duly declared "the permanent seat of government."

to the debts or contracts of the husband; and laws shall be passed providing for the registration of the wife's separate property.<sup>1</sup> SEPT. 18, 1827.

SEC. 6. No county shall be reduced to an area of less than four hundred square miles; nor shall any new county be established in this State containing a less area, nor unless such new county shall contain a population of at least twelve hundred inhabitants. New counties.

SEC. 7. No State officers or members of the legislative assembly shall directly or indirectly receive a fee, or be engaged as counsel, agent, or attorney in the prosecution of any claim against this State. Officers to receive fee in certain cases.

SEC. 8. No Chinaman, not a resident of the State at the adoption of this constitution, shall ever hold any real estate or mining claim, or work any mining claim therein. Chinamen not to hold real estate, or work mining claim, unless.

The legislative assembly shall provide by law in the most effectual manner for carrying out the above provisions.

## ARTICLE XVI.

### BOUNDARIES.

SECTION. 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bounded as follows, to wit: Boundaries of the State.

Beginning one marine league at sea, due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly at the same distance from the line of the coast lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia river; thence easterly to and up the middle channel of said river, and when it is divided by islands, up the middle of the widest channel thereof,<sup>2</sup> [and in like manner up the middle of the main

1. "Whatever property a woman has at the time of the marriage or afterward acquires by gift, devise or inheritance, remains hers, until she by her own consent express or implied, parts with it." *Brummeut v. Weaver*, 2 Or., 173. As to third person at least, this provision has the effect to make the property therein described the separate property of the wife. *Starr v. Hamilton*, 1 Deady, 274. As to what is the separate property of a married woman by the acts of the parties, independent of this provision, see *Id.* 273; *Dick v. Hamilton*, *Id.* 343. This provision is not retroactive, and therefore does not affect rights vested in the husband prior to February 14, 1859, when the constitution went into effect. *Starr v. Hamilton*, *Id.*, 275. A gift from the husband, he acting in

good faith and being solvent, is within this provision. *Id.*, 279. A judgment against a married woman cannot be enforced against her separate estate, unless it appears therefrom that the debt was contracted for the benefit or on the credit of such estate. *Kennard v. Sax*, 3 Or., 267.

2. The act of February 14, 1859, (11 Stat., 383), admitting Oregon into the Union, changed this proposed boundary, by substituting the following description for that contained in the words enclosed in brackets:—"to a point near fort Walla Walla, where the 46th parallel of north latitude crosses said river; thence east on said parallel to the middle of the main channel of the Shoshone or Snake river, thence up the middle of the main channel of said river."

SEPT. 18, 1857. channel of Snake river] to the mouth of the Owyhee river; thence due south to the parallel of latitude forty-two degrees north; thence west along said parallel to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia river and Snake river, concurrently with States and territories of which those rivers form a boundary in common with this State. But the congress of the United States, in providing for the admission of this State into the Union, may make the said northern boundary conform to the act creating the Territory of Washington.

## ARTICLE XVII.

### AMENDMENTS.

Amendments to constitution.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the legislative assembly to be chosen at the next general election; and if, in the legislative assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such amendment or amendments to the electors of the State, and cause the same to be published without delay at least four consecutive weeks in several newspapers published in this State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

Two or more amendments.

SEC. 2. If two or more amendments shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments shall have been agreed upon by one legislative assembly, shall be awaiting the action of a legislative assembly, or of the electors, no additional amendment or amendments shall be proposed.

## ARTICLE XVIII.

### SCHEDULE.

Election for acceptance or rejection of the constitution.

SECTION 1. For the purpose of taking the vote of the electors of the State for the acceptance or rejection of this

constitution, an election shall be held on the second Monday <sup>SEPT. 18, 1857.</sup> of November, in the year 1857, to be conducted according to existing laws regulating the election of delegate in congress, so far as applicable, except as herein otherwise provided.

SEC. 2. Each elector who offers to vote upon this con- Questions.  
stitution, shall be asked by the judges of election this ques-  
tion:

Do you vote for the constitution—yes, or no?

And also this question:

Do you vote for slavery in Oregon—yes, or no?

And also this question:

Do you vote for free negroes in Oregon—yes, or no?

And in the poll books shall be columns headed respect-  
ively, "constitution, yes;" "constitution, no;" "free negroes,  
yes;" "free negroes, no;" "slavery, yes;" slavery, no."

And the names of the electors shall be entered in the <sup>Returns of elec-</sup>  
poll books, together with their answers to the said questions, tion.  
under their appropriate heads. The abstracts of the votes  
transmitted to the secretary of the territory, shall be pub-  
licly opened and canvassed by the Governor and Secretary,  
or by either of them, in absence of the other; and the Gov-  
ernor, or in his absence, the Secretary, shall forthwith issue  
his proclamation,<sup>1</sup> and publish the same in the several news-  
papers printed in this State, declaring the result of the said  
election upon each of said questions.

SEC. 3. If a majority of all the votes given for and <sup>When constitu-</sup>  
against the constitution, shall be given for the constitution, tion to be adopt-  
then this constitution shall be deemed to be approved and ed or rejected.  
accepted by the electors of the State, and shall take effect  
accordingly; and if a majority of such votes shall be given  
against the constitution, then this constitution shall be  
deemed to be rejected by the electors of the State, and shall  
be void.

1. The following is the proclamation:  
WHEREAS, The people of the territory of Oregon, through their delegates in congress assembled, prepared a constitution for their government under a state organization, and submitted the same, with certain propositions, to be approved and determined at an election which was held in the said territory on the ninth day of November, A. D. 1857, in conformity to the provisions made by said convention of delegates; and

WHEREAS, It was provided further by said convention of delegates, that the result of said election should be announced by executive proclamation:

Therefore, to that end it is hereby declared and made known that at the said election, held on the ninth day of November, A. D. 1857, there were

7,195 votes given for the adoption of the said constitution, and 3,195 votes against its adoption. There were 2,645 votes given in favor of slavery, and 7,727 votes against slavery; and there were given 1,081 votes in favor of permitting the residence of free negroes, and 8,640 votes against the same.

IN TESTIMONY WHEREOF, I have hereunto set my official signature, and caused the seal of the territory to be affixed, at Salem, <sup>{ L. s. }</sup> this fourteenth day of December, A.D. 1857.

GEORGE L. CURREY.

By the governor:  
B. F. HARDING, Secretary.  
December 9th, 1857.

SEPT. 18, 1857.

If majority of  
votes cast for  
slavery, section  
to be added to  
the bill of rights

SEC. 4. If this constitution shall be accepted by the electors, and a majority of all the votes given for and against slavery, shall be given for slavery, then the following section shall be added to the bill of rights, and shall be part of this constitution:

"SEC. —. Persons lawfully held as slaves in any State, territory or district of the United States, under the laws thereof, may be brought into this State; and such slaves and their descendants may be held as slaves within this State, and shall not be emancipated without the consent of their owners."

If majority of  
votes given  
against slavery.

And if a majority of such votes shall be given against slavery, then the foregoing section shall not, but the following section shall be added to the bill of rights, and shall be a part of this constitution:

SEC. —. "There shall be neither slavery nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted."

If majority of  
votes given  
against free ne-  
groes.

And if a majority of all the votes given for and against free negroes shall be given against free negroes, then the following section shall be added to the bill of rights, and shall be a part of this constitution:

"SEC. —. "No free negro or mulatto, not residing in this State at the time of the adoption of this constitution, shall come, reside, or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such negroes and mulattoes, and for their effectual exclusion from the State, and for the punishment of persons who shall bring them into the State, or employ or harbor them."

Apportionment  
of senators and  
representatives.

SEC. 5. Until an enumeration of the white inhabitants of the State shall be made, and the senators and representatives apportioned as directed in the constitution, the county of Marion shall have two senators and four representatives; Lane, two senators and three representatives; Clackamas and Wasco one senator jointly, and Clackamas three representatives, and Wasco one representative; Yamhill, one senator and two representatives; Polk, one senator and two representatives; Benton, one senator and two representatives; Multnomah, one senator and two representatives; Washington, Columbia, Clatsop and Tillamook one senator

1. See clause 34 of bill of rights.

2. See clause 35 of bill of rights.

jointly, and Washington one representative, and Washing- SEPT. 18, 1857.  
ton and Columbia one representative jointly; and Clatsop  
and Tillamook one representative jointly; Douglas, one  
senator and two representatives; Jackson, one senator and  
three representatives; Josephine, one senator and one repre-  
sentative; Umpqua, Coos and Curry, one senator jointly,  
and Umpqua one representative, and Coos and Curry one  
representative jointly.

SEC. 6. If this constitution shall be ratified, an election Election, under  
the constitution  
and organiza-  
tion of the state.  
shall be held on the first Monday in June, 1858, for the  
election of members of the legislative assembly, a represen-  
tative in congress, and State and county officers; and the  
legislative assembly shall convene at the capital on the first  
Monday of July, 1858, and proceed to elect two senators in  
congress, and make such further provision as may be neces-  
sary to the complete organization of a State government.

SEC. 7. All laws in force in the territory of Oregon when Former laws.  
this constitution takes effect, and consistent therewith, shall  
continue in force until altered or repealed.

SEC. 8. All officers of the territory of Oregon, or under Officers to con-  
tinue in office,  
until.  
its laws, when this constitution takes effect, shall continue  
in office until superseded by the State authorities.

SEC. 9. Crimes and misdemeanors committed against Crimes against  
the territory.  
the territory of Oregon shall be punished by the State as  
they might have been punished by the territory if the change  
of government had not been made.

SEC. 10. All property and rights of the territory and of Saving of exist-  
ing rights and  
liabilities.  
the several counties, subdivisions, and political bodies corpo-  
rate of, or in the territory, including fines, penalties, forfeit-  
ures, debts and claims of whatsoever nature, and recogni-  
zances, obligations, and undertakings to or for the use of the  
territory or any county, political corporation, officer or other-  
wise, to or for the public, shall enure to the State, or remain  
to the county, local division, corporation, officer, or public,  
as if the change of government had not been made; and  
private rights shall not be affected by such change.

SEC. 11. Until otherwise provided by law, the judicial Judicial dis-  
tricts.  
districts of the State shall be constituted as follows:—The  
counties of Jackson, Josephine and Douglas shall constitute  
the first district. The counties of Umpqua, Coos and Curry,  
Lane and Benton shall constitute the second district. The  
counties of Linn, Marion, Polk, Yamhill, and Washington,  
shall constitute the third district. The counties of Clacka-



SEPT. 18. 1857. mas, Multnomah, Wasco, Columbia, Clatsop and Tillamook shall constitute the fourth district; and the county of Tillamook shall be attached to the county of Clatsop for judicial purposes.

**Attestation.** Done in convention at Salem, the eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

MATTHEW P. DEADY, President.

CHESTER N. TERRY, Secretary.

## AN ACT

*To regulate the times and manner of holding elections  
for Senators in Congress.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the legislature of each State which shall be chosen next preceding the expiration of the time for which any senator was elected to represent said State in congress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in congress, in the place of such senator so going out of office, in the following manner: Each house shall openly, by a viva voce vote of each member present, name one person for senator in congress from said State, and the name of person so voted for, who shall have a majority of the whole number of votes cast in each house, shall be entered on the journal of each house by the clerk or secretary thereof; but if either house shall fail to give such majority to any person on said day, that fact shall be entered on the journal. At twelve o'clock, meridian, of the day following that on which proceedings are required to take place, as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read, and if the same person shall have received a majority of all the votes in each house, such person shall be declared duly elected senator to represent said State in the congress of the United States; but if the same person shall not have received a majority of the votes in each house, or if either house shall have failed to take proceedings as required by this act, the joint assembly shall then proceed to choose, by a viva voce vote of each member present, a person for the purpose aforesaid, and the person having a majority of all the votes of the said joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly

shall meet at twelve o'clock, meridian, of each succeeding day during the session of the legislature, and take at least one vote until a senator shall be elected.

SEC. 2. *And be it further enacted,* That whenever, on the meeting of the legislature of any State, a vacancy shall exist in the representation of such State in the senate of the United States, said legislature shall proceed, on the second Tuesday after the commencement and organization of its session, to elect a person to fill such vacancy, in the manner hereinbefore provided for the election of a senator for a full term; and if a vacancy shall happen during the session of the legislature, then on the second Tuesday after the legislature shall have been organized and shall have notice of such vacancy.

SEC. 3. *And be it further enacted,* That it shall be the duty of the Governor of the State from which any senator shall have been chosen as aforesaid, to certify his election, under the seal of the State, to the president of the senate of the United States; which certificate shall be countersigned by the Secretary of State of the State.

Approved, July 25, 1866.

## THE ELECTION LAWS

OF THE STATE OF OREGON.

Compiled from the General Laws of the State of Oregon, as compiled by  
Matthew P. Deady and Lafayette Lane, 1843-1872, and from  
the Acts of the Legislative Assembly passed and  
approved since the compilation  
of said code.

[From Deady and Lane's Code, 1872, page 564.]

## CHAPTER XIV.

OF ELECTIONS—RESIGNATIONS, VACANCIES AND TERM  
OF OFFICE.

- TITLE I. *Of general elections, and conduct of the same.*
- II. *Of the canvass by the judges and clerks.*
  - III. *Of the canvass by the county clerk—the secretary of state and the governor.*
  - IV. *Of the manner of contesting election to district, county or precinct offices.*
  - V. *Of resignations.*
  - VI. *Of vacancies.*
  - VII. *Of supplying vacancies.*
  - VIII. *Of the commencement and close of term of office.*
  - IX. *Of the election of presidential electors.*

## TITLE I.

*Of general elections, and the conduct of the same.*

(Repealed by Act approved February 24, 1885.)

OCT. 19, '72, §11

## TITLE II.

*Of the canvass by the judges and clerks.*

- |   |  |
|---|--|
| <p>SEC. 21. Poll-books, attesting and counting names in.<br/> 22. Opening ballot-box and counting votes.<br/> 23. Votes, entering by clerks.<br/> 24. Ballot, if two or more folded together, disposition of.<br/> 25. Ballot, how far considered fraudulent.<br/> 26. Votes, how enumerated and proclaimed.<br/> 27. Poll-book, form of.</p> | <p>SEC. 28. Poll-books, how disposed of.<br/> 29. Ballots, how disposed of.<br/> 30. Ballots, written, etc., on white paper.<br/> 31. Ballot-boxes, how provided.<br/> 32. Penalty for not delivering poll-book.<br/> 33. Compensation of judges and clerks.<br/> 34. Misspelling and abbreviations, not to be regarded.</p> |
|---|--|

Poll books attesting and counting names in.

SEC. 21. At the close of the polls, the poll-books shall be signed by the judges and attested by the clerks, and the names therein contained shall be counted, and the number set down at the foot of the poll-books, in manner herein-after provided in the form of poll-books.

Ibid. §12.

Opening ballot-box.

SEC. 22. After the poll-books are signed in the manner hereinafter prescribed in the form of poll-books, the ballot-boxes shall be opened and the tickets taken out, one at a time, by one of the judges, who shall read distinctly while the ticket remains in his hand, the name or names written or printed thereon; also, the office that is intended to be filled by such person voted for, then deliver it to the second judge, who shall examine the same and who shall pass it to the third judge, who shall string it on a strong thread and carefully preserve the same; and the same method shall be observed in respect to each of the tickets in the ballot-box, until the number of tickets taken out of the ballot-box is equal to the number of names upon the poll-books.

Ibid. § 13.

Votes to be entered by clerks.

SEC. 23. The clerks shall enter in a column under the names of the persons voted for, as hereinafter provided in the form of the poll-books, all the votes read by the judges.

Ibid. § 14.

Ballots, two or more folded together.

SEC. 24. If two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the votes is completed, and if, upon a comparison of the count and appearance of such ballot, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be excluded from the count.

Ibid. § 15.

Ballot, how far considered fraudulent.

SEC. 25. If the ballot should be found to contain a greater number of names for any office than the number of persons required to fill that office, it shall be considered fraudulent as to the whole of the names designated to fill such office, but no further.

SEC. 27. The following shall be the form of the poll-books, to be kept by the judges and clerks of elections, under this chapter:

*Number and names of electors.*

It is hereby certified that the number of electors at this election amounts to—.

*Names of persons voted for, and for what office, containing the number of votes given for each candidate.*

Governor.	Representatives in congress.	Representatives in state legislature.	
		Senate.	House of representatives.

G H, J K,  
Clerks.

A B, C D, E F,  
Judges.

SEC. 28. After canvassing the votes in the manner <sup>Ibid. § 18.</sup> aforesaid, the judges, before they adjourn, shall enclose in Poll-books dis-  
a cover one of the poll-books, seal the same securely, and posal of.  
direct it to the county clerk of the county in which the  
election is held; or in case of an election in any incorpo-  
rated city or town, then to the officer or officers of such city

OCT. 19, '72, §18 or town authorized by law to receive and canvass the votes, and the poll-book thus sealed and directed, together with the ballots sealed as hereinbefore required, shall be conveyed by one of the judges or clerks, to be agreed upon for that purpose, to the county clerk of the county; or in case of an election in any incorporated city or town, then to the officer or officers of such city or town authorized by law to receive the same, within ten days from the day of the election, and the other poll-books shall be deposited with one of the judges of election, there to remain for one year for the use of whoever may choose to inspect the same.

Ibid. § 19.  
Ballots, disposal  
of.

SEC. 29. The judges of election shall carefully envelop all ballots rejected or defective as well as the other ballots, and deliver the same to the county clerk; or in case of an election in any incorporated city or town, then to the officer or officers of such city or town authorized by law to receive the same to be filed in his office.

Ibid. § 20.  
Ballots, written  
on white paper.

SEC. 30. All ballots used at any election in this State shall be written or printed on plain white paper, without any mark or designation being placed thereon whereby the same may be known or designated.

Ibid. § 21.  
Ballot-boxes  
how provided.

SEC. 31. The several county courts of this State, and the common council or board of trustees or other legally authorized officers of every incorporated city or town shall provide suitable ballot-boxes for every election precinct or ward in their respective counties, cities or towns, well secured with a good lock and key, the lid thereof shall be fastened with hinges, and shall contain an opening through the same, three inches long and one-fourth of an inch wide, for the reception of ballots.

OCT. 29, '70, §26.  
Penalty for not  
delivering poll-  
book.

SEC. 32.<sup>1</sup> If any judge or clerk of election, after being deputed by the judge of election to carry the poll-book of such election to the clerk of the county, shall fail or neglect to deliver such poll-book to the said clerk within the time prescribed by law, safe, with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars for the use of the county, to be recovered by a civil action in the name of the county court.

Ibid. § 27.  
Compensation  
of judges, etc.

SEC. 33. There shall be allowed out of the county treasury, of each county, to the several judges and clerks of elections, two dollars per day, and to the person carrying the poll-book from the place of election to the clerk's office the

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1. See note to § 1 of this chapter.

sum of ten cents per mile, for going and returning, to be OCT. 29, '70, \$27 paid out of the county treasury.

SEC. 34. In counting votes, the judges of the election Ibid. § 28. shall disregard misspelling or abbreviations of the names of Misspelling and abbreviations. candidates for office if it can be ascertained from such votes for whom they were intended.

### TITLE III.

*Of the canvass by the county clerk, secretary and governor.*

- |  |   |
|--|---|
| <p>Sec. 35. County clerk to open returns and make abstract of votes; proceedings in case of tie; certificate of compensation to judges and clerks.</p> <p>36. Lots, when drawn by candidates in case of tie.</p> | <p>Sec. 37. Abstract of votes, copy to be sent to secretary of state; governor when to grant certificate and order new election.</p> <p>38. Secretary, when to send messenger for returns.</p> <p>39. Votes for assemblyman, when returned to secretary of state.</p> <p>40. Penalty for official misconduct regarding elections.</p> |
|--|---|

SEC. 35. On the tenth day after the close of any election, County clerk to open returns. or sooner, if all the returns be received, the county clerk, taking to his assistance two justices of the peace of the county, shall proceed to open said returns and make abstracts of the votes. Such abstract of votes for governor shall be one sheet, and shall be transmitted to the secretary of State separately, as provided in article V, section 4 of the constitution. Such abstract of Secretary of State, State Treasurer, State printer, justices of the supreme court, members of congress, and district attorneys, shall be all on one sheet; the abstract of the votes for members of the legislative assembly shall be on one sheet; and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the said clerk immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk in his office; *Provided*, That when a tie shall exist between two or more persons for the senate or house of representatives, the county clerk shall give notice to the sheriff of the county, who shall immediately advertise another election for such offices, giving at least ten days notice. If tie between candidate for assembly. And it shall be the duty of the county clerk of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the com-



OCT. 29, '70, §29  
Compensation  
of judges and  
clerks, certifi-  
cate concerning

pensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county court at its next term, and the said court shall order the compensation aforesaid to be paid out of the county treasury.

Ibid, § 30.

Lots, when  
drawn.

SEC. 36. If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk whose duty it is to compare the polls, shall give notice to the several persons who so having the highest and an equal number of votes, to attend at the office of the county clerk at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected. And the said clerk shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided.

Ibid, § 31.

Abstract of votes  
copy to be sent  
to whom.

SEC. 37. The county clerk, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the Secretary of State, at the seat of government, and it shall be the duty of the Secretary of State, in the presence of the Governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for Secretary and Treasurer of State, State printer, justices of the supreme court, member of congress, and district attorneys; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice, by reason of any two or more persons having an equal and the highest number of votes for either of such offices, the governor shall by proclamation order a new election to fill said offices.

Governor to  
grant certificate  
of election.

New election,  
when ordered.

Ibid, § 32.

Secretary, when  
to send for re-  
turns.

SEC. 38. If the returns of the election of any county in this State shall not be received at the office of the Secretary of State within thirty days after the election, the secretary shall forthwith send a messenger to the county court of such county, whose duty it shall be to furnish said messenger with a copy of such returns, and the said messenger shall be paid out of the county treasury of said county, the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county.

Ibid, § 33.

Votes for assem-  
blyman, when  
returned.

SEC. 39. When two or more counties are united in the same senatorial or representative district, the return of votes cast for joint senator or representatives to the legislative as-

sembly shall be forwarded by the county clerk of each county to the Secretary of State in like manner as votes cast for judges of the supreme court and district attorneys are now required by law to be returned. OCT. 29, '70, §38

SEC. 40. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county court of the proper county. In all elections in this State, the person having the highest number of votes for any office shall be deemed to have been elected. ibid. § 34. Penalty for official misconduct

#### TITLE IV.

##### *Of the contest of the election to county, town, district and precinct offices.*

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|--|---|
| SEC. 41. Notice to contest election, who may give. | SEC. 43. Contest for precinct offices.      |
| 42. Notice, how served; contest, how heard.        | 44. Conduct of trial; certificate by clerk. |
|  | 45. Title, how construed.                   |

SEC. 41. Any person wishing to contest the election of any person to any county, district, township or precinct office, may give notice in writing to the person whose election he intends to contest that his election will be contested, stating the cause of such contest briefly, within thirty days from the time said person shall claim to have been elected. ibid. § 35. Notice to contest election.

SEC. 42. Said notice shall be served in the same manner as a summons issued out of the circuit court, ten days before any hearing upon such contest, as herein provided, shall take place, and shall state the time and place that such hearing shall be had. Upon the return of said notice served, to the clerk of the county, he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard in its order by the circuit court; *Provided*, That if the case cannot be determined by the circuit court in term time, within one month after the termination of such election, the judge of the circuit court may hear and determine the same at chambers as soon thereafter as may be practicable, and shall make all necessary orders for the trial of the case and carrying his judgment into effect; *Provided*, That this section shall not apply to township or precinct ibid. § 36. Notice, how served. Contest, how heard.

**OCT. 29, '70, §36** officers. In case of contest between any persons claiming to be elected to any township or precinct office, said notice shall be served in the manner aforesaid and shall be returned to the county court of the county.

**Ibid. § 37.** **Contest for precinct offices.** SEC. 43. Upon the return of said notice to the said county court, and on the day and at the place therein named, the county judge shall hear and determine such contest, and make all necessary orders for trial, of the cause and carrying his judgment into effect.

**Ibid. § 38.** **Conduct of trial** SEC. 44. Each party shall be entitled to subpoenas and subpoenas duces tecum, as in ordinary cases of law; and the court shall hear and determine, without the intervention of jury, the same in such manner as shall carry into effect the expressed will of a majority of the legal voters, as indicated by their votes for such office, not regarding technicalities or errors in spelling the name of any candidate for such office. **Clerk to issue certificate.** And the county clerk shall issue a certificate to the person declared to be duly elected by said court, which shall be conclusive evidence of the right of said person to hold said office; *Provided*, That the judgment or decision of the circuit court in term time, or a decision of a judge thereof in vacation, as the case may be, may be removed to the supreme court, in such manner as is provided for removing causes from the circuit court to the supreme court; *And provided further*, That appeals may be taken from the decision of the county court to the circuit court, as in other cases—in all of which cases the party removing any such judgment or decision by appeal, shall file in the proper court a bond to the opposite party, in such sum and with such sureties as shall be prescribed by a judge thereof, conditioned for the payment of all costs that may be properly taxed against him.

**Ibid. § 39.** **Title, how construed.** SEC. 45. This title shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by law.

## TITLE V.

### *Of resignations.*

**SEC. 46.** Resignation of certain offices; election to fill vacancy in assembly. | **SEC. 47.** Resignation, to whom made.

**Ibid. § 40.** **Resignation of certain officers.** SEC. 46. Any person who shall receive a certificate of his election as a member of the legislative assembly, coroner or commissioner of the county court, shall be at liberty to

resign such office, though he may not have entered upon the execution of its duties or taken the requisite oath of office; and when any vacancy shall happen in the office of member of the senate or house of representatives by death, resignation or otherwise, and a session of the legislature is to take place before the next biennial election, the Governor shall issue a writ of election directed to the sheriff of the county, or sheriffs of the counties composing the district in which such vacancy shall occur, commanding him or them to notify the several judges of election in his county or their district, to hold a special election to fill such vacancy or vacancies, at a time appointed by the Governor.

SEC. 47. Resignations shall be made as follows:

1. By the Secretary of State and State Treasurer, and by all officers elected by the legislature, to the Governor;
2. By all officers who hold their offices by election to the officer or officers respectively authorized by law to order a special election to fill such offices, respectively;
3. By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

OOT. 29, '70, §40  
Ibid. § 41.

Resignations, to whom made.

## TITLE VI.

### *Of vacancies.*

SEC. 48. Office when becomes vacant.

SEC. 49. Office, when governor to declare vacant.

SEC. 48. Every office shall become vacant on the occurring of either of the following events, before the expiration of the term of such office:

1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town, or village, for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime, or of any offence involving a violation of his oath;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond, within the time prescribed by law;
7. The decision of a competent tribunal, declaring void his election or appointment.

Ibid. § 42.

Office when becomes vacant.

OCT. 29, '70. §43  
Office, when  
governor to de-  
clare vacant.

SEC. 49. The Governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the conditions of such bond.

## TITLE VII.

### *Of supplying vacancies.*

SEC. 50. Vacancy during recess of assembly.

51. Vacancies, when filled by county court.

SEC. 52. Person appointed, how to qualify; term of office.

53. Vacancy in office of representative in congress, how filled.

Ibid. § 44.

Vacancy during  
recess of assembly.

SEC. 50. Whenever a vacancy shall occur during the recess of the legislature, in any office which the legislature is authorized to fill by election, the Governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

Ibid. § 45.

Vacancies when  
filled by county  
court.

SEC. 51. When at any time there shall be in either of the offices of county clerk, sheriff, coroner, or any county or precinct office, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county court to perform the duties of either of said offices.

Ibid. § 46.

Person appointed-  
how to qual-  
ify; term of  
office.

SEC. 52. Every such person so appointed, in pursuance of either of the two last preceding sections, shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law, of the officer in whose place he shall be appointed, and he shall continue to exercise and perform the duties of the office to which he shall be appointed, until such vacancy shall be regularly supplied, as provided by law.

Oct. 19, '60 § 1.

Vacancy in office of representative in congress.

SEC. 53.<sup>1</sup> That, whenever a vacancy may occur in the office of representative in congress, from this State, from any cause whatever, the Governor shall issue his writ of election, to fill such vacancy, in the same manner and under the same regulations, as are prescribed by law, to fill vacancies in the legislative assembly.

1. Entitled "An act to provide for filling vacancies that may occur in the office of representative in congress;" and took effect as provided in § 2 thereof, from approval.

## TITLE VIII.

JAN. 11, '54, §38.

*Commencement and close of term of office.*

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| SEC. 54. Term of office to commence from election, unless, etc.<br>55. Office of governor. | SEC. 56. Secretary and treasurer of state and state printer.<br>57. Justices of supreme court. |
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SEC. 54.<sup>1</sup> The term of office of all officers elected, shall begin to run from the time of their election, unless some other express provision is made by law. Commencement of term of office

SEC. 55.<sup>2</sup> That the term of office of the Governor shall cease when his successor, having been declared elected by the legislative assembly, as provided in the constitution, shall be inaugurated by taking the oath of office. Oct. 17, '60, § 1.  
Office of governor.

SEC. 56. The term of office of Secretary of State, State Treasurer and State Printer, shall cease on the first day of the regular session of the legislative assembly next following the general election on which the terms of their successors shall begin. Ibid. § 2.  
Offices of secretary of state, treasurer of state and state printer.

SEC. 57. The terms of office of the judges of the supreme court, shall cease on the first day of September, in the year when the constitutional term of the said judges shall expire, and the term of the judges newly elected to fill the place of any whose term so expires, shall commence on said days. Ibid. § 3.  
Offices of justices of supreme court.

## TITLE IX.

*Of the election of presidential electors.*

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| SEC. 58. Presidential electors, when and how many elected.<br>59. Meeting of electors at seat of government; vacancy in electoral college, how filled; duties of electors. | SEC. 60. Votes for electors, how given received, canvassed and returned; list of electors chosen, how prepared and authenticated; list to be delivered to electors.<br>61. Compensation of electors. |
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SEC. 58.<sup>3</sup> On the Tuesday next after the first Monday in November, 1864, and every four years thereafter, there shall be elected by the qualified electors of this State, as many electors of president and vice-president as this State may be entitled to elect, of senators and representatives in congress. Oct. 24, '64, § 1.  
Presidential electors.

1. Entitled "An act relating to elections, and the mode of supplying vacancies in office;" and took effect as provided therein, from its passage.

2. Entitled "An act to provide for fixing the commencement and close of the terms of State and county officers;" and took effect by operation of the

constitution, January 17, 1861. § 4 of this act was repealed by the repealing act of October 24, 1864.

3. Entitled "An act to provide for the election of electors of president and vice president, and to prescribe their duties;" and took effect as therein provided from approval.

OOT. 24. '64. § 2  
Meeting of electors.

Vacancy in electoral college.

Duties of electors.

Ibid. § 3.  
Presidential electors-votes for.

Lists of electors chosen.

List to be delivered to college.

Ibid. § 4.  
Compensation of electors.

SEC. 59. The electors of president and vice-president shall convene at the seat of government on the first Wednesday of December next after their election, at the hour of twelve of the clock at noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by death, refusal to act, neglect to attend or otherwise, the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy in the electoral college, and when all the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such electors shall proceed to perform the duties required of them by the constitution and laws of the United States.

SEC. 60. The votes for the electors shall be given, received, returned and canvassed as the same are given, returned and canvassed for members of congress. The Secretary of State shall prepare two lists of the names of the electors elected and affix the seal of the State to the same. Such lists shall be signed by the Governor and Secretary, and by the latter delivered to the college of electors at the hour of their meeting on such first Wednesday of December.

SEC. 61. Every such elector who shall attend at the time and place appointed, and give his vote for president and vice-president, shall be entitled to receive from this State three dollars for each day's attendance at such election, and three dollars for every twenty miles travel in going to and returning from the place where the electors shall meet, on the usually traveled route.

## ACT OF 1885.

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(See pages 82 to 100, Laws of 1885.)

[Sections 1, 4, 10, 14, 15 and 24 of this act were amended at Special Session, 1885. See Acts approved November 19 and November 25, 1885, following.]

AN ACT to provide for the Registration of Voters, regulating the Manner of Conducting Elections, providing for the Prevention and Punishment of Frauds affecting the Elective Franchise, and repealing Title 1, of Chapter 14, of the Miscellaneous Laws of Oregon.

*Be it enacted by the Legislative Assembly of the State of Oregon:*

SECTION 1. A general election shall be held in the several election precincts and polling places in this State, on the first Monday in June, 1885, and biennially thereafter, at which there shall be chosen so many of the following officers as are, by law, to be elected in such year, namely: a Governor, Secretary of State, State Treasurer, Superintendent of Public Instruction, State Printer, Justices of the Supreme Court, a member of congress, circuit judges, members of the State senate and house of representatives, county judges, district attorneys, county superintendent of common schools, commissioners of the county court, county clerks, sheriffs, county treasurers, coroners, assessors, justices of the peace and constable, and all other district, county and precinct officers, provided by law.

SEC. 2. Each of the county clerks of the several counties of this State shall procure a suitable book or books, with the necessary ruled columns and appropriate headings and labels, for the registration by precincts, polling places and wards, as hereinafter provided, of all the citizens of this State, resident in their respective counties, who are, or may be before the next general election, legal voters thereof, which shall be designated, entitled and known in law as "The County Register." In the county register the county clerk, on the return of the registers of voters hereinafter provided for, shall register every domiciled inhabitant of his county who, by virtue of the citizenship, lawful age and other qualifications prescribed by the constitution and laws of this State is, or may be, before the next general or special election, a legal voter thereof.

SEC. 3. It shall be the duty of the county court, in the several counties of the State, at the regular term in January preceding the general election, to set off and establish election precincts within the county, and said court may set off and establish within said election



precincts, as many polling places as may be deemed necessary or convenient; *Provided*, That no election precinct or polling place shall contain more than 500 voters, as nearly as can be ascertained by the court; and the said county court shall also appoint three capable and discreet persons, possessing the qualifications of electors, and who shall not all be of the same political party, to act as registers of voters and judges of elections, at each election precinct or polling place within said election precincts; and shall also appoint two suitable persons, having the qualifications of electors, and who shall be of different political parties, to act as clerks for the registration of voters and of elections. The said judges and clerks, so appointed, shall hold their office for two years. The county clerk shall make out, and deliver to the sheriff of the county, immediately after the appointment of the said judges and clerks, a notice thereof in writing directed to the judges and clerks so appointed, and shall deliver to the sheriff two precinct or polling place registers; and it shall be the duty of the sheriff, within twenty days after the receipt of said notices, to serve the same upon each of the said judges and clerks, and he shall deliver to one of the judges at the same time, the said two precinct or polling place registers. Whenever polling places are established in any election precinct, they shall be designated by numbers, viz: Polling place No. —, of — precinct.

SEC. 4. It shall be the duty of the judges and clerks of election to meet at the usual place of voting in their precinct, or polling place therein, or such place therein as may be designated by the county court, on the first Monday in March preceding each general election, for the purpose of registering votes in the said precinct or polling place. The said judges of election shall organize by electing one of their number as chairman. They shall meet at 9 o'clock in the forenoon, and continue until 5 o'clock in the afternoon. They may adjourn one hour at noon. They shall continue said session for three days. They shall receive the applications for registration of such residents of their several election precincts as there are, or on the day of election next following the day of making such application, would be entitled to vote therein, and who shall personally present themselves to said board of registration, and such only. Before receiving any application they shall each take the following oath, before some officer authorized to administer oaths: "I do solemnly swear that I will honestly and faithfully discharge the duties of register of voters according to law, to the best of my ability."

SEC. 5. It shall be the duty of each elector to make application for registration to the said judges while they are sitting as a board of registration in the precinct or polling places therein which said applicant resides. Any person neglecting or refusing to register, or to

procure a certificate of registration as prescribed in this act, shall not be allowed to vote at any general, special or municipal election held in this State.

Sec. 6. When an elector shall make application to the said judges sitting as a board of judges for the registration of voters, the said judges shall make diligent inquiry as to the qualification of such applicant to become a voter at the next election. Either one of the judges or the clerks, or any other person, may challenge an applicant for registration when such application is made; and upon an applicant for registration being challenged as aforesaid, the chairman of the said board shall administer the following oath or affirmation to such applicant:

You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualification as an elector at the approaching election?

First. If the person be challenged as unqualified, on the ground that he is not a citizen, the chairman of said board shall propound to him the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen, and if neither, have you declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization; if so, when and where?

Second. If challenged on the ground that he has not resided in this State for six months immediately preceding the election, the following questions shall be propounded to him.

1. Have you resided in this State for six months immediately preceding this approaching election?
2. Have you been absent from this State within the six months immediately preceding this election?
3. If so, when you left was it for a temporary purpose, with the design and intent of returning, or did you intend to remain away?
4. Did you, while absent, look upon and regard this State as your home?
5. Did you, while absent, vote in any other State or Territory?

Third. If challenged on the ground that he is not a resident of the county or precinct, the following questions shall be put to him:

1. When did you come into this county and precinct?
2. When you came into this county and precinct did you come for a temporary purpose merely, or for the purpose of making it your home?
3. How long have you been an actual resident of this county and precinct?

Fourth. If challenged on the ground that he is not twenty-one years of age, the following question shall be put to him:

1. What is your age?

The chairman of said board, or any one of said judges, shall put all such other questions to the applicant challenged under the respective heads aforesaid as may be necessary to test his qualification as an elector at the next election. If such applicant shall be found qualified and admitted to registration, the chairman of the board of judges shall issue to him a certificate of registration, which shall state that said elector, giving his name, place of residence and registration number, has been admitted to registration and is entitled to vote at the ensuing election, in the precinct or polling place wherein such registration has taken place, for county officers, and in any county of the State for State officers; and such certificate shall remain in force two years, and may be used at all general, special or municipal elections to be held within that time at which the elector to whom such certificate is issued is a qualified voter. The certificate shall be signed by the chairman of the board of judges, and shall bear date as of the time of its issue. In case of the accidental loss or destruction of any such certificate of registration, upon proper application, supported by affidavit and satisfactory proof thereof, the chairman of said board of judges may at any time prior to the day of election issue a duplicate certificate of registration. Said duplicate certificate shall have written or printed upon it the fact that it is a duplicate certificate, and is issued to the elector therein named in lieu of the original, which has been accidentally lost or mislaid.

SEC. 7. In all cases the board of judges acting as registers of voters shall require satisfactory proof of citizenship on the part of all persons not personally known to them to be native born, or naturalized citizens of the United States, before admitting them to registration. When the applicant is of foreign birth he shall produce to such registering officer as he may apply to for registration his certificate of naturalization, or a certified copy of his declaration of intention to become a citizen, which must be stamped or marked by such registering officer with his name and official character, the date when and the county where presented; but when it shall satisfactorily appear to such registering officers, by the affidavit of the applicant (supported by the affidavit of one or more trustworthy registered citizens as to the credibility of such applicant), that such certificate has been lost or destroyed, such registering officers shall proceed to register the name of said applicant, if otherwise qualified, in said register, together with the witnesses produced, the time when and the place where said applicant declared his intention to become a citizen of the United States, with all other important facts sworn to or af-

firmed on such application. If the applicant challenged as aforesaid shall refuse to answer fully any question which shall be put to him as aforesaid, the judges shall reject his application.

SEC. 8. The qualification of the applicant challenged shall be determined by the said board of judges, and if they find him disqualified as an elector under any of the respective heads aforesaid, they shall reject the application; but if they find him qualified, his name shall be entered on the register, and a certificate issued to him, as provided for in section 6 of this act. The name of each applicant for registration, rejected, shall be entered on a separate list in said register, and a statement of the cause of such rejection.

SEC. 9. The manner of registration shall be as follows: Clear and distinct entries shall be made in said books, setting forth in separate columns the name at full length, without the use of initials, of the person registered; his age, omitting fractions of years, except where the applicant is between the ages of 20 and 21 years; the country of his nativity; his occupation; the particular city, town, ward, precinct or polling place of his residence. If the elector resides in an incorporated city or village, then the name of the street, avenue or alley on which he resides shall be indicated; if a naturalized foreigner, when, where, and by what court he was admitted to become a citizen of the United States; also, the date of registry, and a number affixed to each name, which numbers shall run successively in the order of registration; and, to the truth of the facts stated in such entries, when the board of registration are in doubt, or require it, the person registered shall be duly sworn, which fact shall also be noted and verified by the word "sworn," to be entered in a separate column opposite the name.

SEC. 10. When the said board of judges have completed the registration of electors in their precinct or polling place, at the expiration of three days from the said first Monday in March, they shall prepare and certify to the said registers, and shall seal up one of said registers, and one of said judges shall deliver the said register, so sealed, to the county clerk on the next day, or as soon thereafter as is possible. The other register shall be retained by the chairman of the said board. The following shall be the form of said

#### CERTIFICATE.

We hereby certify that we sat as a board of precinct (or polling place) registration at the usual place of voting in said precinct or polling place from the . . . . day of March, 18 . . , to the . . day of March, 18 . . , and have admitted to registration (here give the number) citizens of said precinct (or polling place) whose names and other matters of

qualifications will appear upon the foregoing register, and that the whole number of qualified voters on said register is .....

Dated .....

[Attest]

G H

I J

Clerks.

A B

C D

E F

Judges.

SEC. 11. The county clerk, on receiving the said precinct or polling place register, shall immediately copy the names of all electors found in said registers into the county register. The names shall be arranged alphabetically by the clerk according to precincts or polling places. Each precinct or polling place shall be kept separate and distinct.

SEC. 12. In the county register aforesaid, there shall be provided, and left, a blank column for the cancellation of the registration when required, by entering in said column, opposite the name of the person registered, the word "dead," when authentic information shall be communicated to the county clerk of the decease of such person; and the word "removed," when such person shall remove from the county; the word "insane" when the insanity of the person shall have been legally established; and the word "infamous," when such person shall have been duly convicted of any infamous crime.

SEC. 13. In case of the sickness or absence from the precinct or polling place of any qualified elector during the time the said judges are sitting to register voters, such elector may apply to the chairman of said board of judges, and on making satisfactory proof that the said applicant is a qualified voter of said precinct, and that said applicant was sick or necessarily absent from the said precinct during the time said board was sitting to register voters, the said chairman of the said judges may register the name of the applicant on the register in his possession, and issue to him the certificate herein before provided for; and said chairman shall immediately notify the county clerk of the said registration, giving him a copy of the same, and the clerk shall enter the name in the county register. But in case the said chairman has doubts or just grounds of suspicion that the said applicant is not a qualified elector for said precinct, he shall administer to him the oath prescribed in section 6, and he may propound any or all of the questions enumerated under section 6. If said applicant shall be found disqualified, the application shall be rejected and the name of the applicant entered on the list of rejected applications.

SEC. 14. No application for registration shall be received or registered by said chairman of said board after the 25th day of March preceding any general election.

SEC. 15. The said judges and clerks shall meet at the usual voting place in their respective precincts on the first Monday in August

preceding each presidential election, for the purpose of registering the names of voters in their said precincts or polling places. They shall hold their session for three days, and shall meet at 9 o'clock A. M., and adjourn at 5 P. M. of the same day. They shall observe the same rules for the registration of electors as is prescribed in section 6. They shall, after the expiration of the time limited by law for registering voters, affix the certificate to the register prescribed in section 10, and shall return the said register to the county clerk in the same manner as for a general election. On the receipt of the precinct or polling place registers, the county clerk shall copy the names into the county register in the same manner as is prescribed in section 11. It shall, however, not be necessary to issue certificates of registration as provided for in section 6 of this act to any elector who was registered and received such certificate at the preceding March session of said board. Certificates of registration shall be issued to duly qualified electors admitted to registration by said board, who had previously not been registered. Certificates of registration issued at the August session of the board of registration in any year shall hold good until the March session of said board next following, as provided in this act.

SEC. 16. At all special elections the said judges and clerks shall meet at the usual voting place in said precinct or polling place thirty days prior to the time for holding said special election, to register any qualified elector who has not been registered at the preceding election. They shall meet at 9 o'clock A. M. and close at 5 P. M., and shall continue said session for three days. The said board shall observe the same rule in registering voters and making return thereof to the county clerk, as is prescribed for general elections. Any applicant may be challenged by said judges or any other person for the same grounds as prescribed in section 6, and the same questions shall be put to the applicant as prescribed in said section 6.

SEC. 17. In case of a special election, the county clerk shall deliver to the sheriff of the county the precinct or polling place register used at the election preceding the special election, having first added thereto the names of all additional registered electors, and the said sheriff shall deliver the same to the chairman of said judges of election at the time the poll books are delivered to said judges. All qualified electors whose names have been registered on the said precinct or polling place registers, and otherwise qualified, shall have the right to vote at said special election without having their names registered again. Certificates of registration shall be issued to qualified electors who have not been registered at the preceding election.

SEC. 18. The county register of the several counties of this State shall be closed twenty (20) days before any general or special election

in each or any of the several counties, and after such county register shall have been so closed no person shall have the right to be registered.

SEC. 19. The county judge and the county commissioners of the several counties of this State, in addition to the duties now required of them by law, shall constitute, in their respective counties, a county board of registration, whose duties as such shall be as hereinafter provided. In such of the counties of this State as now have no county commissioners, and until such time as such counties shall be provided by law with a board of county commissioners, the county judge, county clerk and sheriff of the county shall constitute in such counties the county board of registration provided for by this section. On the first Monday following the closing of the county register, as hereinbefore provided, the county board of registration in each of the several counties in this State shall meet at the court house at the county seat of the county, for the transaction of such business as may lawfully come before them; they shall continue in session from day to day, sitting at least six hours in each day, for at least three days, and as much longer as may be necessary to complete their duties concerning the approaching election; *Provided*, That in no case shall the session extend more than ten days. It shall be the duty of the county boards of registration of the several counties to carefully examine the county register and the names thereon, together with the facts noted concerning them, of all persons registered as claiming the right to vote at the approaching election, and diligently to inquire as to the qualifications of all persons registered whom they have any reason to believe do not possess the requisite qualifications of electors in the approaching election. And to that end they shall have authority to issue subpoenas, for any witnesses whom they may have reason to believe possess any knowledge concerning the qualifications of the persons whose right to vote they may have under consideration. Such subpoenas shall be served by the sheriff of the county, and any disobedience or failure to attend on the part of witnesses so subpoenaed may be punished as a contempt by such board, in the manner and by the means employed by county courts in such cases.

SEC. 20. It shall be the duty of such county boards of registration to hear, inquire into and determine all objections to the right to vote of any person registered, which may be made and filed with the county clerk before the meeting of such board by any qualified registered elector within their respective counties. All such objections shall be in writing and verified in the same manner as pleadings in courts of record. A copy of such written objections, together with written notice requiring the person whose right to vote is disputed to

appear before such board on the first day of their session above provided for, and there to answer such questions, under oath, as may be propounded to him touching his qualifications as an elector, at the approaching election, shall be served upon the person objected to at least two days before the meeting of such board. Copies of such objections and notice shall be personally served on such person or left at his place of residence, as the same shall appear on the county register. Such service and return thereof shall be made by the persons and in the manner provided by law for the service and return of subpoenas in courts of record, and no objections so made and filed, as hereinbefore provided, shall be considered unless it shall appear from the return of some officer or the affidavit of some person authorized to make such service, that service of a copy of such objections and notice, hereinbefore required, has been made as by this section provided. At such meeting of the board, due service of said objection and notice having been made, they shall proceed to examine such person objected to in case he appears, under oath, touching all matters specified in the objections filed, respecting his qualifications as an elector at the approaching election. If the board, or a majority of them, shall be satisfied upon hearing the testimony produced before them for and against the person objected to, that such person is not a qualified elector, or if such person, after having been duly notified as hereinbefore provided, shall fail to appear at the time notified, they shall strike his name from the county register.

SEC. 21. If any person shall feel aggrieved by the decision of the county board of registration in striking his name from the county register, in refusing to strike one or more names from such county register which have been objected to, or in refusing to enter his name upon the county register upon petitioning therefor as provided in the preceeding section, he may appeal from such decision to the circuit court of the proper county. Such appeal may be heard and determined in a summary manner by the circuit judge, at chambers, or by the circuit court in term time.

SEC. 22. The county clerks of the several counties shall be *ex-officio* clerks of the several boards of registration, and they shall correct the county registers of their respective counties according to the decisions rendered by said county boards of registration, and such county clerks shall attend the sessions of said county boards. Two members of the county board of registration shall constitute a quorum for the transaction of business.

SEC. 23. Within five days from the adjournment of the county board of registration the county clerk shall prepare and deliver to the sheriff of the county a precinct or polling place register of the several election precincts and polling places of the county, which pre-



cinct or polling place register shall consist of an alphabetical list, by the surname, of all the electors registered in the county register of the several precincts or polling places within the county, giving the names at full length and the corresponding numbers as set opposite each name in said county register, and the designations and other matters in said county register contained; and such sheriff shall deliver the said precinct or polling place register, together with at least five printed or written copies of the names contained therein, and the place of residence and other designation of the registered voters, which shall also be prepared by the county clerk, to one of the judges of election for the precinct or polling place for which such register is intended. Such judge shall, within two days after receipt thereof, post up said copies in at least three public places of the precinct or polling place, as the case may be. Such precinct or polling place register shall be kept by the said judge, to whom it shall have been delivered within the precinct or polling place, and open to inspection of the qualified voters of the precinct or polling place until after such approaching election, when it shall be by the judges of election returned to the county clerk, as herein provided. It shall be the duty of the judges of election of the several precincts and polling places to check or mark by some appropriate character, as the letter "V," on the register, in a column provided for that purpose, the name of each voter at the time of voting, and shall return said register so marked to the county clerk, in a separate sealed package, within the time allowed by law for making election returns. Such register so marked and returned, shall be filed by the county clerk, and constitute part of the public records of his office.

SEC. 24. The county clerk of the proper county shall, ten days before the time for holding a general or special election in any incorporated city or town in this State, prepare from the county register and make out ward registers, one for each ward in such city or town, and upon each such ward register he must enter the names of the qualified electors of the ward appearing on the county register, alphabetically arranged, together with the entries appearing on the county register opposite such names. He shall not enter the name of the same person on more than one ward register. He must, upon satisfactory proof of change of residence, transfer any name from one ward register to another, at the same time cancelling the name on the ward register from which the transfer is made, noting such transfer on each such ward register opposite the name. The expense of preparing such ward register shall be paid by the city or town in which such election is held. The county clerk shall, at least five days before the time for holding any such election in any incorporated city or town, deliver to one of the judges appointed to conduct the elec-

tion in each of the wards of said city or town, the respective ward register thereof, and shall also deliver to such judge at least five written or printed copies of the names contained in the ward register, and the place of residence and other designation of the registered votes, and such judge shall immediately post up said copies in at least three public place in said ward, and shall keep said ward register open to inspection of the qualified voters of the ward. The provisions of this act shall apply to all elections held in incorporated cities and towns in this State; and all the provisions of this act, so far as applicable thereto, shall be had and taken in holding and conducting elections in such incorporated cities and towns. The certificates of registration issued by the board of judges at the March session preceding a general election may be used at any municipal election held within two years from the issue of such certificate. The provision of this act shall not apply to elections in incorporated cities and towns in this State which are to be held prior to the time the first registration of voters shall have been completed in accordance with the terms of this act.

SEC. 25. If any county clerk or member or officer of the board of registration or judge or clerk of election shall wilfully or fraudulently register or enroll, or admit any person to be registered or enrolled on the county register, or the register of any precinct, polling place or ward, or admit any person to vote at any election, knowing him not to be qualified to be registered or enrolled or to vote as aforesaid, or shall refuse to register or enroll any person on said county register, or precinct, polling place or ward register, knowing him to be entitled to be so registered or enrolled, or who shall refuse to admit the vote of any person, knowing him to be entitled to vote, or shall otherwise knowingly or fraudulently act in violation or contravention to the provisions of this act, he shall, on conviction, for each and every offense, be punished by fine not less than \$200 nor more than \$1000, and [or] by imprisonment in the State penitentiary not exceeding one year, or by both such fine and imprisonment.

SEC. 26. If any person shall take any oath or affirmation required to be taken by this act, and shall wilfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is required, such persons shall be deemed guilty of perjury, and on conviction, shall be punished accordingly.

SEC. 27. Every person who wilfully causes, or procures, or allows himself to be registered in the precinct or polling place register of any county, knowing himself not to be entitled to such registration, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not to exceed one year, or by both such fine and imprisonment.

cinct or polling place register shall consist of an alphabetical list, by the surname, of all the electors registered in the county register of the several precincts or polling places within the county, giving the names at full length and the corresponding numbers as set opposite each name in said county register, and the designations and other matters in said county register contained; and such sheriff shall deliver the said precinct or polling place register, together with at least five printed or written copies of the names contained therein, and the place of residence and other designation of the registered voters, which shall also be prepared by the county clerk, to one of the judges of election for the precinct or polling place for which such register is intended. Such judge shall, within two days after receipt thereof, post up said copies in at least three public places of the precinct or polling place, as the case may be. Such precinct or polling place register shall be kept by the said judge, to whom it shall have been delivered within the precinct or polling place, and open to inspection of the qualified voters of the precinct or polling place until after such approaching election, when it shall be by the judges of election returned to the county clerk, as herein provided. It shall be the duty of the judges of election of the several precincts and polling places to check or mark by some appropriate character, as the letter "V," on the register, in a column provided for that purpose, the name of each voter at the time of voting, and shall return said register so marked to the county clerk, in a separate sealed package, within the time allowed by law for making election returns. Such register so marked and returned, shall be filed by the county clerk, and constitute part of the public records of his office.

SEC. 24. The county clerk of the proper county shall, ten days before the time for holding a general or special election in any incorporated city or town in this State, prepare from the county register and make out ward registers, one for each ward in such city or town, and upon each such ward register he must enter the names of the qualified electors of the ward appearing on the county register, alphabetically arranged, together with the entries appearing on the county register opposite such names. He shall not enter the name of the same person on more than one ward register. He must, upon satisfactory proof of change of residence, transfer any name from one ward register to another, at the same time cancelling the name on the ward register from which the transfer is made, noting such transfer on each such ward register opposite the name. The expense of preparing such ward register shall be paid by the city or town in which such election is held. The county clerk shall, at least five days before the time for holding any such election in any incorporated city or town, deliver to one of the judges appointed to conduct the elec-

tion in each of the wards of said city or town, the respective ward register thereof, and shall also deliver to such judge at least five written or printed copies of the names contained in the ward register, and the place of residence and other designation of the registered voters, and such judge shall immediately post up said copies in at least three public place in said ward, and shall keep said ward register open to inspection of the qualified voters of the ward. The provisions of this act shall apply to all elections held in incorporated cities and towns in this State; and all the provisions of this act, so far as applicable thereto, shall be had and taken in holding and conducting elections in such incorporated cities and towns. The certificates of registration issued by the board of judges at the March session preceding a general election may be used at any municipal election held within two years from the issue of such certificate. The provision of this act shall not apply to elections in incorporated cities and towns in this State which are to be held prior to the time the first registration of voters shall have been completed in accordance with the terms of this act.

SEC. 25. If any county clerk or member or officer of the board of registration or judge or clerk of election shall wilfully or fraudulently register or enroll, or admit any person to be registered or enrolled on the county register, or the register of any precinct, polling place or ward, or admit any person to vote at any election, knowing him not to be qualified to be registered or enrolled or to vote as aforesaid, or shall refuse to register or enroll any person on said county register, or precinct, polling place or ward register, knowing him to be entitled to be so registered or enrolled, or who shall refuse to admit the vote of any person, knowing him to be entitled to vote, or shall otherwise knowingly or fraudulently act in violation or contravention to the provisions of this act, he shall, on conviction, for each and every offense, be punished by fine not less than \$200 nor more than \$1000, and [or] by imprisonment in the State penitentiary not exceeding one year, or by both such fine and imprisonment.

SEC. 26. If any person shall take any oath or affirmation required to be taken by this act, and shall wilfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is required, such persons shall be deemed guilty of perjury, and on conviction, shall be punished accordingly.

SEC. 27. Every person who wilfully causes, or procures, or allows himself to be registered in the precinct or polling place register of any county, knowing himself not to be entitled to such registration, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not to exceed one year, or by both such fine and imprisonment.

SEC. 28. In case of the absence or inability of any of the said judges of elections to attend at the time for registering voters, the county judge of the county shall have the authority to appoint a qualified elector of said precinct to fill such vacancy or vacancies, and in like manner, should any of the clerks fail to attend, the said county judge, and if he fail to do so, then the judges of election shall have the authority to appoint a suitable person, as qualified in this act, to fill the vacancy or vacancies, if any, of the clerks of election.

SEC. 29. The county clerk shall, at least forty days before any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county three written notices thereof for each election precinct and polling place in said county. Said notices shall be in the following form:

ELECTION NOTICE.

Notice is hereby given that on the ..... day of ....., 18 .... at the ..... in the precinct of .....; polling place No. ...., in the county of ....., an election will be held for State, county, or district officers, namely: (Here name the offices to be filled). Which election will be held at 8 o'clock in the morning and will continue until six in the afternoon of said day.

Dated this ..... day of ....., 18....

A. B.,  
County Clerk.

SEC. 30. The sheriff to whom such notice shall be delivered shall post up said notice in three of the most public places in each election precinct and polling place at least thirty days previous to the time of holding any general election, and at least ten days previous to holding any special election.

SEC. 31. The said judges of election and clerks aforesaid shall meet at the usual voting places in their said precinct and polling places at the time prescribed for holding a general or special election, to act as judges of election. Before receiving votes, the said judges and clerks shall each take the following oath, which shall be administered by any officer authorized to administer oaths, or the chairman of said board, if he be present, and if not, then by one of the said judges:

I, ....., do solemnly swear (or affirm) that I will perform the duties of judge of election (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

SEC. 32. In case one or more of said judges of election shall not be present at the time prescribed for opening the polls, the bystanders may elect one or more from their number to act as such judge of election. The chairman of said board of registration shall act as chairman of the judges if he be present, and if not, the judges shall elect one of their number chairman.

SEC. 33. In case one or both of said clerks shall not be present at the time of opening the polls, the judges of election shall appoint a suitable person to act as clerk of said election.

SEC. 34. At general or special elections to be held in this State, the polls shall be opened at the hour of 8 in the forenoon and continue open until 6 o'clock in the afternoon of the same day, at which time the polls shall be closed. Prior to opening the polls, the chairman of said judges of election shall make public proclamation of the same, and thirty minutes before closing of the polls, public proclamation shall be made by the same officer that the polls will be closed in half an hour. The judges, in their discretion, may adjourn the polls at 12 o'clock at noon for one hour, proclamation of the same being made.

SEC. 35. At every general, special or municipal election hereafter held in this State, in pursuance of law, each elector shall, in full view, deliver to the chairman of the judges of election a single ballot, or piece of paper on which shall be written or printed the names of the persons voted for, with proper designation of the office which he or they may have intended to fill. No ballot shall bear upon the outside thereof any impression, device, color or thing designated to distinguish such ballot from other legal ballots, or whereby the same may be known or designated. No ticket must be used at any election, or circulated at the day of election, unless it is written or printed on paper furnished by the Secretary of State for the purpose; and it is hereby made the duty of the Secretary of State to procure and furnish on application and payment to him of the actual cost thereof, with ten per centum thereof added, which percentage shall be his compensation, to the State central committee, county committee, or other managing committee, of any political party or organization in this State, such quantity or amount of paper to be used as ballots or tickets, as may be deemed necessary or convenient.

SEC. 36. It shall hereafter be lawful for the State central committee, county committee, or other managing committee of any political party or organization in this State, or managing committee of any municipal or local party, before each election in this State, to prepare and adopt by engraving or otherwise, a ticket, vignette or heading, with an appropriate inscription to be printed at the top of the ticket of the party on the inside thereof, as a distinctive and characteristic heading thereto. Such vignette shall not be more than two inches high, by four and one-half inches wide, and in addition to the device adopted, shall set forth legibly the fact that the ticket is the regular ticket of the party with the name thereof. It shall also show the district, ward, or precinct where such ticket may be lawfully voted.

Such vignette and inscription shall stand at the head of the ticket, on the inside thereof.

SEC. 37. When such vignette and inscription have been adopted and prepared, an impression of the same, followed by the regular ticket of such party, printed so as to constitute a lawful election ballot, and sealed up in an envelope, may be filed with the county clerk of the county at any time before the opening of the polls on election day. Such ballots shall be kept by said clerk on deposit, and from the time of said filing it shall be unlawful for any person to imitate, copy, or in any manner counterfeit the same. Any person violating the foregoing provisions shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars, or by imprisonment in the penitentiary for the term not exceeding one year, or both, in the discretion of the court.

SEC. 38. Any person who shall knowingly print, circulate or distribute any ticket or tickets, ballot, or voting paper, having therein or thereon, the vignette, or any imitation of the vignette, or inscription, of any ballot or ticket so filed with the county clerk, but containing the name, or names, of any candidate, or candidates, other or different from the name, or names, candidate, or candidates, upon the ballot or ticket of such party so filed or deposited with said clerk shall, upon conviction thereof, be punished by a fine, not exceeding one thousand dollars, or by imprisonment in the penitentiary not exceeding one year, or by both such fine and imprisonment, at the discretion of the court; *Provided*, That nothing in this act shall be construed to interfere with the right of any elector to erase or insert any name or proposition upon such ticket, if done in writing.

SEC. 39. Before any ballot or ticket shall be delivered to the judges of election, it shall be folded by the voter so that the name written or printed thereon cannot be seen. The chairman of the board of judges, to whom such ticket or ballot may be delivered shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and, if no objection shall be made to him, and the said judges are satisfied that the elector is legally qualified, according to the constitution and the laws of the State, to vote at that election, he shall immediately put the ticket or ballot in the box, without inspecting the names written or printed thereon, and without unfolding the same, and the clerk of election shall enter the name in full of the elector, and number, on the poll books; one of the judges of election shall at the same time write after the name of said elector on the precinct or polling place register the word "Voted," or letter "V." to indicate the same. No elector shall be allowed to vote unless his name is registered on the precinct or polling place register, nor shall he be permitted to vote unless he presents to the board of

judges the certificate of registration issued to him, as provided for in section 6 of this act; and when such elector shall have voted, the chairman of the board, or one of the judges, shall write or stamp upon such certificate of registration the word "Voted," with the name of the precinct or polling place and county, and the date thereof, and shall write or stamp his name and title thereon, and then return such certificate to the elector producing the same. It shall be the duty of the county court of each county of this State to provide for each polling place within such county two ballot boxes, one of which shall be used for the reception of all general ballots deposited at such polling place, and the other shall be used for the reception of all ballots deposited for State or district officers, which boxes shall be delivered by the sheriff, with the poll books and registers, to the judges of election. The ballot boxes shall be unlike in respect to the class of votes they are intended to receive, but shall be uniform in character and size in respect to the class to which it belongs. Said boxes shall be marked, "General," and "State and District," respectively. All ballots for the entire tickets voted for shall be deposited in the box marked "General," and all ballots for State or district officers only shall be deposited in the box marked "State and District." Upon the count of the vote cast, all ballots found in the box marked "State and District," containing the names of persons other than State or district officers shall be rejected as to the names of all persons other than State or district officers.

SEC. 40. It shall be the duty of each judge or clerk of election, or any elector, to challenge any person offering to vote whom he shall know or suspect not to be qualified as an elector.

SEC. 41. If a person offering to vote is challenged as unqualified by any one enumerated in section 37, the chairman of the said judges shall administer to him the following oath or affirmation:

You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, the time and place of registration and qualification as an elector at this election.

The said chairman shall then propound to him the questions found under section 6. The said chairman may put such other questions to the person challenged as may be necessary to test his qualifications as an elector at that election.

SEC. 42. If the person so challenged shall refuse to answer fully any question which shall be put to him, the judges shall reject his vote.

SEC. 43. If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, the said chairman of said judges shall administer to him the following oath:



You do solemnly swear (or affirm) that you are a citizen of the United States, or have declared your intention to become such, one year next preceding this election; that you are of the age of twenty-one years; that you have been a resident of this State for six months next preceding this election; that you have been for the last ninety days an actual resident of this county, and that you now reside in this precinct, and that your name is duly registered, and that you are the individual named in the certificate of registration in your possession which you have just produced.

SEC. 44. Whenever any person's vote shall be received, after having taken the oath prescribed by section 40, it shall be the duty of the clerks of election to write on the poll books at the end of such person's name the word "sworn," and one of the judges shall write the word "sworn" in front of the said person's name on the register.

SEC. 45. The judges of election, in determining the residence of persons offering to vote, and also of persons offering to register, shall be governed by the following rules, so far as the same may be applicable:

1. That place shall be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State or Territory or county of this State, for a temporary purpose only.

3. A person shall not be considered or held to have gained a residence in any country [county] of this State, into which he shall come for temporary purposes only, without the intention of making said county his home, but with the intention of leaving the same when he shall have accomplished the business that brought [brought] him into it.

4. If a person remove to any other State, or to any of the territories, with the intention of making it his permanent home, he shall be considered and held to have lost his residence in this State.

5. The place where a married man's family reside shall be considered and held to be his residence.

6. The place where an unmarried man sleeps shall be considered and held to be his residence.

7. If a person shall go from this State into any other State or territory, and there exercise the right of suffrage, he shall be considered and held to have lost his residence in this State.

SEC. 46. It shall be the duty of the judges of election, or the chairman thereof, immediately before proclamation is made of the opening of the polls, to open the ballot boxes in the presence of the people there assembled, and turn the same upside down, so as to empty the said boxes of anything that may be in them and then lock said boxes securely, and they shall not be re-opened until for the purpose of counting the ballots therein at the close of the election.

SEC. 47. In all incorporated cities and towns in this State, no person shall approach or stand within one hundred feet of the polls, when open for the purpose of receiving votes, except the elector desiring to vote, and but one elector shall be permitted to approach the polls within one hundred feet at the same time; *Provided, however,* That said judges of election shall, if requested, permit one person from each political party, selected by the party, to stand at the polls, while open for receiving votes, for the purpose of challenging votes. And the said judges of election shall, if requested, permit the respective candidates, or some person selected by a candidate, or one or more, not to exceed three persons on a side, to be present in the room where said judges are, during the time of receiving and counting the votes.

SEC. 48. For the purpose of preserving order at the polls, and also at the places of registration, the judges of election are hereby authorized to enforce a fine, not exceeding fifty dollars on any person or persons who shall [conduct themselves] in a disorderly or riotous manner at the polls, or at the places of registration, and shall persist in such conduct after having been warned of the consequences, or who shall refuse to remove from the polls more than one hundred feet when directed; and on refusal to pay the same, to commit him or them to the common jail of the county for any time not exceeding twenty-five days, or until the fine is paid. And the sheriff, deputy sheriff, constable, jailor, and policeman of any incorporated city or town, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no sheriff, deputy sheriff, constable, or policeman be present, the judges may appoint a special constable or constables to execute their orders.

SEC. 49. There shall be allowed out of the county treasury of each county to the several judges and clerks of election, three dollars per day while sitting as a board to register voters, and while holding elections, and to the person carrying the poll books from the place of election to the clerk's office, the sum of ten cents per mile, for going and returning, to be paid out of the county treasury.

SEC. 50. The manner of counting the votes by the judges and clerks, and the canvass of the same by the county clerk, Secretary of State and the Governor, shall be conducted as prescribed in titles 2 and 3 of chapter 14 of miscellaneous laws.

SEC. 51. The Secretary of State is hereby directed to compile the election laws of this State, which shall include the provisions of the constitution of the United States, and the laws of congress referring to the election of senators and representatives, the provisions of the constitution of this State, the laws for the registration of voters, and all the laws in force referring to elections, and have the same printed.

SEC. 52. The Secretary of State shall, after the said election laws are compiled and printed as prescribed in section 51, forward one copy thereof to each of the supreme and circuit judges of this State, one copy to each member of the present legislative assembly, and shall furnish the county clerk of each county in this State with a sufficient number of copies to supply each judge of election with at least one copy; and it shall be the duty of the county clerk of each county on the receipt of such election laws to furnish each judge of election in this county with at least one copy of said laws. The said election laws shall be bound in half calf, and after each election shall be returned to county clerk of [or] the judges of election.

SEC. 53. Title 1 of chapter 14 of the miscellaneous laws of this State, and all acts or parts of acts in conflict herewith, are hereby repealed.

Approved February 24th, 1885.

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### ACT OF NOVEMBER 19, 1885.

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(See page 4, Laws Special Session, 1885.)

AN ACT to amend Section 1 of an Act entitled "An Act to provide for the Registration of Voters, regulating the Manner of Conducting Elections, providing for the Prevention and Punishment of Frauds, affecting the Elective Franchise, and repealing Title 1 of Chapter 14 of the Miscellaneous Laws of Oregon, approved February 24, 1885."

*Be it enacted by the Legislative Assembly of the State of Oregon:*

SECTION 1. That section 1 of said act be amended so as to read as follows:

Section 1. A general election shall be held in the several election precincts and polling places in this State, on the first Monday in June, 1886, and biennially thereafter, at which there shall be chosen so many of the following officers as are, by law, to be elected in such year, namely: a Governor, Secretary of State, State Treasurer, Superintendent of Public Instruction, State Printer, Justices of the Supreme Court, a member of congress, circuit judges, members of the State senate and house of representatives, county judges, district attorneys, county superintendents of common schools, commissioners of the county court, county clerks, sheriffs, county treasurers, coroners, assessors, county surveyors, justices of the peace and constables, and all other State, district, county and precinct officers, provided by law.

Approved November 19, 1885.

## ACT OF NOVEMBER 25, 1885.

(See pages 15 to 18, Laws Special Session, 1885.)

AN ACT to amend Sections 4, 10, 14, 15 and 24 of an Act entitled "An Act to provide for the Registration of Voters, regulating the Manner of Conducting Elections, providing for the Prevention and Punishment of Frauds affecting the Elective Franchise, and repealing Title 1, of Chapter 14, of the Miscellaneous Laws of Oregon, approved February 24, 1885."

*Be it enacted by the Legislative Assembly of the State of Oregon:*

SECTION 1. That section 4 of said act be amended so as to read as follows:

Section 4. It shall be the duty of the judges and clerks of election to meet at the usual place of voting in their precinct, or polling place therein, or such place therein as may be designated by the county court, on the first Monday in April preceding each general election, for the purpose of registering votes in the said precinct or polling place. The said judges of election shall organize by electing one of their number as chairman. They shall meet at 9 o'clock in the forenoon, and continue until 5 o'clock in the afternoon. They may adjourn one hour at noon. They shall continue said session for three days. They shall receive the applications for registration of such male residents of their several election precincts as there are, or on the day of election next following the day of making such application would be, entitled to vote therein, and who shall personally present themselves to said board of registration and such only. Before receiving any application, they shall each take the following oath, before some officer authorized to administer oaths:

I do solemnly swear that I will honestly and faithfully discharge the duties of register of voters according to law, to the best of my ability.

SEC. 2. That section 10 of said act be so amended as to read as follows:

Section 10. When the said board of judges have completed the registration of electors in their precinct or polling place at the expiration of three days from the said first Monday in April, they shall prepare and certify to the said register, and shall seal up one of said registers, and one of said judges shall deliver the said register, so sealed, to the county clerk on the next day, or as soon thereafter as is possible. The other register shall be retained by the chairman of the said board. The following shall be the form of said

## CERTIFICATE.

We hereby certify that we sat as a board of precinct (or polling place) registration at the usual place of voting in said precinct or polling place, from the . . . . . day of April,

18....., to the.....day of April, 18....., and have admitted registration (here give the number) citizens of said precinct (or polling place) whose names and other matters of qualification will appear upon the foregoing register, and that the whole number of qualified voters on said register is.....

(Attest)

G. H.,

I. J.,

Clerks.

(Dated).....

A. B.,

C. D.,

E. F.,

Judges.

SEC. 3. That section 14 of said act be amended so as to read as follows:

Section 14. No application for registration shall be received or registered by said chairman of said board after the 25th day of April preceding any general election.

SEC. 4. That section 15 of said act be amended so as to read as follows:

Section 15. The said judges and clerks shall meet at the usual voting place in their respective precincts, on the first Monday in August preceding each presidential election, for the purpose of registering the names of voters in their said precinct or polling place. They shall hold their sessions for three days, and shall meet at 9 o'clock A. M. and adjourn at 5 P. M. of the same day. They shall observe the same rules for the registration of electors as is prescribed in section 6. They shall, after the expiration of the time limited by law for registering voters, affix the certificate to the register, prescribed in section 10, and shall return the said register to the county clerk in the same manner as for a general election. On the receipt of the precinct or polling place registers, the county clerk shall copy the names into the county registers in the same manner as is prescribed in section 11. It shall, however, not be necessary to issue certificates of registration, as provided for in section 6 of this act, to any elector who was registered and received such certificate at the preceeding April session of said board. Certificates of registration shall be issued to duly qualified electors admitted to registration by said board, who had previously not been registered.

SEC. 5. That section 24 of said act be amended so as to read as follows:

Section 24. The county clerk of the proper county shall, ten days before the time for holding a general or special election in any incorporated city or town in this State, prepare from the county register and make out ward registers, one for each ward in such city or town, and upon each such ward register he must enter the names of the qualified electors of the ward appearing on the county register, alphabetically arranged, together with the entries appearing on the county register opposite such names. He shall not enter the name of the same person on more than one ward register. He must, upon

satisfactory proof of change of residence, transfer any name from one ward register to another, at the same time canceling the name on the ward register from which the transfer is made, noting such transfer on each such ward register opposite the name. The expense of preparing such ward registers shall be paid by the city or town in which such election is held. The county clerk shall, at least five days before the time for holding any such election in any incorporated city or town, deliver to one of the judges appointed to conduct the election in each of the wards of said city or town, the respective ward register thereof, and shall also deliver to such judge at least five written or printed copies of the names contained in the ward register, and place of residence and other designation of the registered voters, and such judge shall immediately post up said copies in at least three public places in said ward, and shall keep said ward register open to inspection of the qualified voters of the ward. The provisions of this act shall apply to all elections held in incorporated cities and towns in this State; and all the provisions of this act, so far as applicable thereto, shall be held and taken in holding and conducting elections in such incorporated cities and towns. The certificates of registration issued by the board of judges at the April session preceding a general election, may be used at any municipal election held within two years from the issue of such certificate. The provisions of this act shall not apply to elections in incorporated cities and towns in this State which are to be held prior to the time the first registration of voters shall have been completed in accordance with the terms of this act.

Approved November 25, 1885.

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ACT APPROVED NOVEMBER 30, 1885.

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(See Laws of Special Session, 1885, pages 48 to 64, inclusive.)

AN ACT to provide for a Uniform System of Books and Certificates to be used in the Registration of Voters and Elections, as laid down in an Act entitled "An Act to provide for the Registration of Voters, regulating the Manner of Conducting Elections, providing for the Prevention and Punishment of Frauds, affecting the Elective Franchise, and repealing Title 1, of Chapter XIV, of the Miscellaneous Laws of Oregon," approved February 24, 1885.

*Be it enacted by the Legislative Assembly of the State of Oregon:*

SECTION 1. The book in which the registration of voters is made by the judges and clerks of election sitting as a board of registration, shall be known and designated as the Precinct Register. Every such

book shall have on the outside of the front cover, an appropriate label, which shall bear these words: Precinct Register, county of ....., polling place ....., No ..... of ..... precinct. Following the title page, securely bound in, shall be the following rules and instructions for judges and clerks of election:

RULES AND INSTRUCTIONS FOR JUDGES AND CLERKS OF ELECTIONS.

A general election is to be held upon the first Monday in June, 1886, and biennially thereafter, at which shall be chosen such officers as are by law elected in such year.

The judges and clerks for registration of voters and of elections, selected by the county court at its regular term in January preceding the general election, shall hold their office for two years; and written notice thereof, made by the county clerk, shall be served by the sheriff of the county, who shall also deliver to one of the judges two precinct registers.

On the first Monday in March preceding each general election, the judges and clerks shall meet at the polling place in their precinct, when the judges shall elect one of their number as chairman. They shall meet at nine o'clock in the forenoon, and continue until five o'clock in the afternoon, but may adjourn one hour at noon. They shall continue in session three days. The judges, after taking their oath before an officer authorized to administer oaths, shall receive application for registration of those residents of the precinct who will be legal voters at the next following election day, and who shall personally present themselves to the board of registration, and no others.

When an elector shall make application to the said judges, sitting as a board of judges for the registration of voters, the said judges shall make diligent inquiry as to the qualification of such applicant to become a voter at the next general election. Either one of the judges or the clerks, or any other person, may challenge an applicant for registration when such application is made; and upon an applicant for registration being challenged as aforesaid, the chairman of the said board shall administer the following oath or affirmation to such applicant:

You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualification as an elector at the approaching election?

First. If the person be challenged as unqualified, on the ground that he is not a citizen, the chairman of said board shall propound to him the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen, and if neither, have

you declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization; if so, when and where?

Second. If challenged on the ground that he has not resided in this State for six months immediately preceding the election, the following questions shall be propounded to him.

1. Have you resided in this State for six months immediately preceding this approaching election?

[2.] Have you been absent from this State within the six months immediately preceding this election?

3. If so, when you left was it for a temporary purpose, with the design and intent of returning, or did you intend to remain away?

4. Did you, while absent, look upon and regard this State as your home?

5. Did you while absent, vote in any other State or Territory?

Third. If challenged on the ground that he is not a resident of this county or precinct, the following questions shall be put to him:

1. When did you come into this county and precinct?

2. When you came into this county and precinct did you come for a temporary purpose merely, or for the purpose of making it your home?

3. How long have you been an actual resident of this county and precinct?

Fourth. If challenged on the ground that he is not twenty-one years of age, the following questions shall be put to him:

1. What is your age?

The chairman of said board, or any one of said judges, shall put all such other questions to the applicant challenged under the respective heads aforesaid as may be necessary to test his qualifications as an elector at the next election. If such applicant shall be found qualified and admitted to registration, the chairman of the board of judges shall issue to him a certificate of registration, which shall state that said elector, giving his name, place of residence and registration number, has been admitted to registration and is entitled to vote at the ensuing election, in the precinct or polling place wherein such registration has taken place, for county officers, and in any county of the State for State officers; and such certificate shall remain in force two years, and may be used at all general, special or municipal elections to be held within that time, at which the elector to whom the certificate is issued as [is] a qualified voter. The certificate shall be signed by the chairman of the board of judges, and shall bear date as [at] the time of its issue. In case of the accidental loss or destruction of any such certificate of registration, upon proper application, supported by affidavit and satisfactory proof thereof, the chairman of said board of



judges may at any time, prior to the day of election, issue a duplicate certificate of registration. Said duplicate certificate shall have written or printed upon it the fact that it is a duplicate certificate, and is issued to the elector therein named in lieu of the original, which has been accidentally lost or mislaid.

In all cases, the board of judges acting as registers of voters shall require satisfactory proof of citizenship on the part of all persons not personally known to them to be native born, or naturalized citizens of the United States, before admitting them to registration. When the applicant is of foreign birth, he shall produce to such registering officer as he may apply to for registration, his certificate of naturalization, or a certified copy of his declaration of intention to become a citizen, which must be stamped or marked by such registering officer with his name and official character, the date when and the county where presented; but when it shall satisfactorily appear to such registering officers, by the affidavit of the applicant, (supported by the affidavit of one or more trustworthy registered citizens as to the credibility of such applicant), that such certificate has been lost or destroyed, such registering officers shall proceed to register the name of said applicant, if otherwise qualified, in said register, together with the witnesses produced, the time when and place where said applicant declared his intention to become a citizen of the United States, with all other important facts sworn to or affirmed on such application. If the applicant challenged as aforesaid shall refuse to answer fully any question which shall be put to him as aforesaid, the judges shall reject his application.

"The qualification of the applicant challenged shall be determined by the said board of judges, and if they find him disqualified as an elector under any of the respective heads aforesaid, they shall reject the application; but if they find him qualified, his name shall be entered on the register and a certificate issued to him, as hereinbefore provided. The name of each applicant for registration rejected, shall be entered on a separate list in said register, and a statement of the cause of such rejection."

All entries in the precinct register shall be clear and distinct, and the name of the applicant shall be written in full, without the use of initials. In entering the age, omit the fractions of years, unless the applicant is between the ages of twenty and twenty-one.

Upon completion of the registration, the judges shall sign the certificate attached to the precinct register, and shall deliver one of said registers, sealed, to the county clerk on the next day, or as soon thereafter as is possible. The other register shall be retained by the chairman of said board.

"In case of the sickness or absence from the precinct or polling

place of any qualified elector during the time the said judges are sitting to register voters, such elector may apply to the chairman of said board of judges, and on making satisfactory proof that the said applicant is a qualified voter of said precinct, and that said applicant was sick, or necessarily absent from the said precinct during the time said board was sitting to register voters, the said chairman of the said judges may register the name of the applicant on the register in his possession, and issue to him the certificate hereinbefore provided for; and said chairman shall immediately notify the county clerk of the said registration, giving him a copy of the same, and the clerk shall enter the name in the county register. But in case the said chairman has doubts, or just grounds of suspicion, that the said applicant is not a qualified elector for said precinct, he shall administer to him the oath prescribed, and he may propound any or all of the questions enumerated. If said applicant shall be found disqualified, the applicant shall be rejected, and the name of the applicant entered on the list of rejected applications."

No application for registration shall be received by the chairman of said board after March 25, preceding the election.

Upon the first Monday in August preceding each presidential election, the judges and clerks shall meet at the polling place in their precinct, to register the names of voters and make returns thereof; and the same rules and instructions are to govern their conduct and acts as are provided for their sessions in March; but it shall not be necessary to issue certificates of registration to those persons who were registered and received one at the preceding March session. Certificates issued at the August session in any year shall hold good until the March session next following.

Thirty days before all special elections, the judges and clerks shall have met in the same manner, to register any legal voter who has not been registered at the preceding elections; the same rules of registration and making returns apply as in general elections.

For special elections, the precinct register used at the preceding elections shall be served upon the chairman of the board at the time the poll books are delivered to the judges, the county clerk having first added thereto the names of all additional registered electors; and all persons whose names appear thereon shall be entitled to vote at the special election without additional registration. The sheriff will deliver a poll book to one of the judges, together with at least five written or printed copies of the names contained in said poll books. Such judge shall, within two days after receipt thereof, post up said copies in at least three public places of the precinct or polling place, as the case may be. Such poll book shall be kept by the judge, to whom it was delivered, and open to the inspection of the qualified

voters of the precinct or polling place until after the election. On election day, the judges shall indicate in the poll book by the word "voted" or the letter "V," the name of each voter at the time of voting, in the column provided for that purpose, and shall return the poll book to the county clerk, in a separate sealed package, within ten days after election day.

If any county clerk or member or officer of the board of registration or judge or clerk of election shall wilfully or fraudulently register or enroll, or admit any person to be registered or enrolled on the county register, or the register of any precinct, polling place or ward, or to admit any person to vote at any election, knowing him not to be qualified to be registered or enrolled or to vote as aforesaid, or shall refuse to register or enroll any person on said county register, or precinct, polling place or ward register, knowing him to be entitled to be so registered or enrolled, or who shall refuse to admit the vote of any person knowing him to be entitled to vote, or shall otherwise knowingly or fraudulently act in violation or contravention to the provisions of this act, he shall, on conviction, for each and every offense, be punished by fine not less than \$200 nor more than \$1,000, and [or] by imprisonment in the State penitentiary not exceeding one year, or by both such fine and imprisonment.

If any person shall take any oath or affirmation required to be taken by this act, and shall wilfully swear or affirm falsely in regard to any matter or thing concerning which such oath or affirmation is required, such person shall be deemed guilty of perjury, and on conviction shall be punished accordingly.

Every person who wilfully causes or procures, or allows himself to be registered in the precinct or polling place register of any county, knowing himself not to be entitled to such registration, shall, upon conviction thereof, be punished by a fine not exceeding \$1,000, or by imprisonment in the penitentiary not to exceed one year, or by both such fine and imprisonment.

In case of the absence or inability of any of the said judges of election to attend at the time for registering voters, the county judge of the county shall have the authority to appoint a qualified elector of said precinct to fill such vacancy or vacancies; and in like manner should any of the clerks fail to attend, the said county judge, and if he fail to do so, then the judges of election shall have the authority to appoint a suitable person, as qualified in this act, to fill such vacancy or vacancies, if any, of the clerks of election.

On election day, before receiving any votes, the judges and clerks, shall each take the oath prescribed for them, which may be administered by any officer authorized to administer oaths, or by the chairman of the board, if he be present, if not, then by one of the judges.

In case of one or more of said judges of election shall not be present at the time prescribed for opening the polls, the bystanders may elect one or more from their number to act as such judge of election. The chairman of said board of registration shall act as chairman of the judges, if he be present, and if not, the judges shall elect one of their number chairman.

In case one or both of said clerks shall not be present at the time of opening the polls, the judges of election shall appoint a suitable person to act as clerk of said election.

At general or special elections to be held in this State, the polls shall be opened at the hour of 8 in the forenoon and continue open until 6 o'clock in the afternoon of the same day, at which time the polls shall be closed. Prior to opening the polls, the chairman of said judges of election shall make public proclamation of the same, and thirty minutes before closing the polls, public proclamation shall be made by the same officer that the polls will be closed in half an hour. The judges, in their discretion, may adjourn the polls at 12 o'clock at noon for one hour, proclamation of the same being made.

At every general, special or municipal election hereafter held in this State, in pursuance of law, each elector shall, in full view, deliver to the chairman of the judges of election a single ballot, or piece of paper, on which shall be written or printed the names of the persons voted for, with proper designation of the office which he or they may be required to fill. No ballot shall bear upon the outside thereof any impression, device, color or thing designed to distinguish such ballot from other legal ballots, or whereby the same may be known or designated. No ticket must be used at any election, or circulated at the day of election, unless it is written or printed on paper furnished by the Secretary of State for the purpose; and it is hereby made the duty of the Secretary of State to procure and furnish, on application and payment to him of the actual cost thereof, with ten *per centum* thereof added, which per centage shall be his compensation, to the State central committee, county committee, or other managing committee, or any political party or organization in this State, such quantity or amount of paper to be used as ballots or tickets, as may be deemed necessary or convenient.

A vignette, or heading, by engraving or otherwise, may be adopted by each political party, to be printed as a distinguishing feature, on the regular ticket of the party, on the inside and at the head thereof. A ballot so prepared, sealed in an envelope, may be filed with the county clerk at any time before the opening of the polls, and thereafter it shall be unlawful for any person to imitate, copy or counterfeit the same.

Every elector shall have the right to erase or insert any name or proposition on his ballot, if done in writing.

Before any ballot or ticket shall be delivered to the judges of election, it shall be folded by the voter so that the name written or printed thereon cannot be seen. The chairman of the board of judges, to whom such ballot or ticket may be delivered, shall, upon the receipt thereof, pronounce, in an audible voice, the name of the elector, and, if no objection shall be made to him, and the said judges are satisfied that the elector is legally qualified, according to the constitution and the laws of the State, to vote at that election, he shall immediately put the ticket, or ballot, in the box, without inspecting the names written or printed thereon, and without unfolding the same, and the clerks of election shall enter the name, in full, of the elector, and number, on the poll books. One of the judges of election shall, at the same time, write before the name of said elector, on the polling place register, the word "voted," or letter "V," to indicate the same. No elector shall be allowed to vote unless his name is registered in the precinct or polling place register, nor shall he be permitted to vote unless he presents to the board of judges the certificate of registration issued to him, as hereinbefore provided for; and when such elector shall have voted, the chairman of the board, or one of the judges, shall write or stamp upon such certificate of registration the word "voted," with the name of the precinct or polling place and county, and the date thereof, and shall write or stamp his name and title thereon, and then return such certificate to the elector producing the same. It shall be the duty of the county court of each county of this State, to provide for each polling place within such county two ballot boxes, one of which shall be used for the reception of all general ballots deposited at such polling place, and the other shall be used for the reception of all ballots deposited for State or district officers, which boxes shall be delivered by the sheriff, with the poll books and registers, to the judges of election. The ballot boxes shall be unlike, in respect to the class of votes they are intended to receive, but shall be uniform in character and size in respect to the class to which it belongs. Said boxes shall be marked "General" and "State and District," respectively. All ballots for the entire tickets voted for shall be deposited in the box marked "General," and all ballots for State or district officers only shall be deposited in the box marked "State and District." Upon the count of the vote cast, all ballots found in the box marked "State and District," containing the names of persons other than State or district officers, shall be rejected as to the names of all persons other than State or district officers.

It shall be the duty of each judge or clerk of election, or any

elector, to challenge any person offering to vote whom he shall know or suspect not to be qualified as an elector.

If a person offering to vote is challenged as unqualified by any one, the chairman of the said judges shall administer to him the following oath or affirmation:

You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence, the time and place of registration, and qualifications as an elector at this election.

The said chairman shall then propound to him the same questions as he would have, had the person been challenged when applying for registration. The said chairman may put such other questions to the person challenged as may be necessary to test his qualification as an elector at that election.

If the person so challenged shall refuse to answer fully any question which shall be put to him, the judges shall reject his vote.

If the challenge be not withdrawn after the person offering to vote shall have answered the question put to him as aforesaid, the said chairman of said judges shall administer to him the following oath:

You do solemnly swear (or affirm) that you are a citizen of the United States, or have declared your intention to become such, one year next preceding this election; that you are of the age of twenty-one years; that you have been a resident of this State for six months next preceding this election; that you have been for the last ninety days an actual resident of this county, and that you now reside in this precinct, and that your name is duly registered, and you are the individual named in the certificate of registration in your possession which you have just produced.

Whenever any person's vote shall be received, after having taken the above "oath," it shall be the duty of the clerks of election to write on the poll books at the end of such person's name the word "sworn," and one of the judges shall write the word "sworn" in front of such persons name on the register.

The judges of election, in determining the residence of persons offering to vote, and also of persons offering to register, shall be governed by the following rules, so far as the same may be applicable:

1. That place shall be considered and held to be the residence of a person, in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State or territory or county of this State for a temporary purpose only.

3. A person shall not be considered or held to have gained a residence in any country [county] of this State, into which he shall have come for temporary purposes only without the intention of making said county his home, but with the intention of leaving the same when he shall have accomplished the business that brought [brought] him into it.

4. If a person remove to any other State, or to any of the territories, with the intention of making it his permanent home, he shall be considered and held to have lost his residence in this State.

[5.] The place where a married man's family reside shall be considered and held to be his place of residence.

6. The place where an unmarried man sleeps shall be considered and held to be his residence.

7. If a person shall go from this State into any other State or territory, and there exercise the right of suffrage, he shall be considered and held to have lost his residence in this State.

It shall be the duty of judges of election, or the chairman thereof, immediately before proclamation is made of the opening of the polls, to open the ballot boxes in the presence of the people there assembled, and turn the same upside down, so as to empty the said boxes of anything that might be in them, and then lock said boxes securely, and they shall not be re-opened until for the purpose of counting the ballots therein at the close of the election.

In all incorporated cities and towns in this State, no person shall approach or stand within one hundred feet of the polls, when open for the purpose of receiving votes, except the elector desiring to vote, and but one elector shall be permitted to approach the polls within one hundred feet at the same time; *Provided, however,* That the said judges of election shall, if requested, permit one person from each political party, selected by the party, to stand at the polls while open for receiving votes, for the purpose of challenging votes; and the said judges of election shall, if requested, permit the respective candidates, or some person selected by a candidate, or one or more, not to exceed three persons on a side, to be present in the room where the said judges are, during the time of receiving and counting the votes.

For the purpose of preserving order at the polls, and also at the places of registration, the judges of election are hereby authorized to enforce a fine, not exceeding \$50, on any person or persons who shall [conduct themselves] in a disorderly or riotous manner at the polls, or at the places of registration, and shall persist in such conduct after having been warned of the consequences, or who shall refuse to remove from the polls more than one hundred feet when directed; and on refusal to pay the same, to commit them or him to the common jail of the county for any time not exceeding twenty-five days, or until the fine is paid. And the sheriff, deputy sheriff, constable, jailor and policemen of any incorporated city or town, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no sheriff, deputy sheriff, constable, or

policeman be present, the judges may appoint a special constable or constables to execute their orders.

There shall be allowed out of the county treasury of each county, to the several judges and clerks of elections, \$3 per day, while sitting as a board to register voters, and while holding elections; and to the person carrying the poll books from the place of election to the clerk's office, the sum of ten cents per mile, for going and returning, to be paid out of the county treasury.

The manner of counting the votes by the judges and clerks, and the canvass of the same by the county clerk, Secretary of State and the Governor, shall be conducted as prescribed in [the general laws of Oregon], titles 2 and 3 of chapter 14 of miscellaneous laws.

On the next, pages shall be printed the following oath of judges and clerks of election:

## OATH OF JUDGES.

STATE OF OREGON, }  
County of..... } ss.

I, ....., and I ....., and I ....., do solemnly swear that I will honestly and faithfully discharge the duty of register of voters, according to law, to the best of my ability.

Subscribed and sworn to before me this .....day of..... 18 ...

.....  
.....  
.....

## OATH OF CLERKS.

STATE OF OREGON, }  
County of..... } ss.

I, ....., and I ....., do solemnly swear that I will honestly and faithfully discharge the duties of clerk in the registration of voters, according to law, to the best of my ability.

Subscribed and sworn to before me this .....day of..... 18....

.....  
.....

Then shall follow the registration portion of the precinct register. This portion shall consist of but twenty-seven folio pages of durable paper, demy size, securely bound in, and ruled and arranged in the following manner: One and one-half inches from the upper edge of the folio page and parallel to said edge, shall be a single ruled red line; five-eighths of an inch below this head line and parallel to it, shall be two red and one blue ruled lines; then shall be the faint line ruling, which shall be such a distance apart as to allow but nineteen lines to the page; five-eighths of an inch from the left hand edge of the folio page from the head line and perpendicular thereto, to the foot of the page shall be a single blue line; four inches from this



line and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; five-eighths of an inch from this line and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; two and three-quarters inches from this line and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; one and seven-eighths inches from the right hand edge of the folio page and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; one and seven-eighths inches from this line and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; two and three quarters inches from this line and parallel to it, ruled from the head line to the foot of the page, shall be a similar blue line; from this line and perpendicular thereto and one and a quarter inches from the head line, shall be a single red line to the middle of the folio page; two inches from the last blue line and from and perpendicular to the last red line to the foot of the page, shall be a similar blue line; the faint line spaces in the third column from the right hand edge of the folio page, shall have the spaces formed by two faint lines drawn between the faint lines already described, equidistant from them and from each other.

Above the head line of each folio page shall be printed the following words: •

Precinct register, polling place, No. . . . ., of precinct. . . . ., . . . . . county, State of Oregon, 18. .

At the head of the first column shall be the following, reg. No., at the head of the second column shall be the word, name; at the head of the third column the word age; at the head of the fourth column the word nationality; at the head of the fifth column the word occupation; over the heads of the sixth and seventh columns the word residence; at the head of the sixth column the words city, town or ward; at the head of the seventh column the words name and No. of street; at the head of the eighth column the word naturalized; at the head of the ninth column the words date of registration; and at the head of the tenth column the words, whether sworn to the truth of matters in entry; in the column headed "naturalized," in the left hand portion of the first faint line space, shall be the word date; in the left hand portion of the second faint line space the word place; in the left hand portion of the third faint line space the word court; and similarly for all the faint line spaces down the column to the foot of the page.

On the back of the last folio page shall be printed the following

#### CERTIFICATE.

We hereby certify that we sat as a board of . . . . . registration at the usual place of voting in said . . . . . from the . . . . . day of March, 18 . . . . , to the . . . . day

of March, 18...., and have admitted to registration..... citizens of said..... whose names and other matters of qualifications will appear upon the foregoing register, and that the whole number of qualified voters on said register is.....

Dated.....

Attest.....

.....

Clerks.

Judges.

Then shall follow that portion of the precinct register for the registration of applicants rejected. This shall consist of three folio pages, demy size. On the front of the first folio page shall be printed the words, register of rejected applicants. The head lines and faint lines throughout, shall be the same as in the register proper. The blue lines perpendicular to the head lines, and running to the foot of the page, shall be, respectively as follows: First line, three and a half inches from the left-hand edge of the folio page; the second, five-eighths of an inch from the first line; the third, two inches from the second line; one quarter of an inch from and parallel to the first head line, shall be a red line, drawn to the middle of the folio page; the fourth, two inches from the third line and running from the red line last described; the fifth line, two and a quarter inches from the middle of the folio page; the sixth line, two and a quarter inches from the fifth line; the seventh line, one and a half inches from the sixth line; and the eighth line, one and a half inches from the seventh line.

Above the head line shall be printed the following:

Precinct Register. List of persons rejected for registration at polling place No. ...., of..... Precinct,..... County, State of Oregon, 18....

The headings of the respective columns shall be as follows: First column, name; second, age; third, nationality; fourth, city, town or ward; fifth, name and No. of street; sixth, occupation; seventh, naturalization claimed; eighth, date of rejection; ninth, whether sworn to the truth of matters in entry; and tenth, cause of rejection; also, above the fourth and fifth columns, the words, residence claimed.

SEC. 2. The county register shall be in size, seventeen by twenty-one inches. It shall be labeled on the back with the name of the county and the numbers of the precincts registered therein. It shall be made of ledger paper of durable quality, securely bound in. That portion thereof devoted to any particular precinct shall contain at least twenty-seven folio pages, each county register containing as many precincts as may be convenient, and each precinct being properly indexed; and there shall be as many county registers as may be necessary to contain all the precincts of that county.

The county register shall be ruled and arranged in the following manner: One and one-half inches from the upper edge of the folio page and parallel to said edge, shall be a single ruled red line; five-eighths of an inch below this head line, and parallel to it, shall be two red and one blue ruled lines; then shall be the faint line ruling which shall be at such a distance apart as to allow but nineteen lines to the page; five-eighths of an inch from the left hand edge of the folio page, ruled from the head line, and perpendicular thereto, to the foot of the page, shall be a single blue line; one-half an inch from this line, and parallel to it, similarly ruled, shall be a similar blue line; three and three-quarters inches from this line, and parallel to it similarly ruled, shall be a similar blue line; five eighths of an inch from this line, and parallel to it; similarly ruled, shall be a similar blue line; one and three-quarters inches from this line, and parallel to it, similarly ruled, shall be a similar blue line; from this line, and perpendicular thereto, and one and a quarter inches from the head line, and parallel thereto, shall be a single red line to the middle of the folio page; one and three-quarter inches from the last blue line, and parallel to it similarly ruled, shall be a similar blue line; three and three-eighths inches from the right hand edge of the folio page, and parallel to it, similarly ruled to the blue line last described, shall be a similar blue line; one and a half inches from this line, similarly ruled, shall be a similar blue line; one and a half inches from this line, and parallel to it, similarly ruled, shall be a similar blue line; and two and a quarter inches from this line, and parallel to it, similarly ruled, shall be a similar blue line; the faint line spaces in the fourth column from the right hand edge of the folio page, shall have spaces formed by two faint lines drawn between the faint lines already described, equidistant from them and each other.

Above the line of each folio page shall be printed the following word: county register. . . . . county. State of Oregon 18..

The headings of the respective columns shall be as follows First column, register number; second, names; third, age; fourth, nationality; fifth, city, precinct or ward; sixth, name and number of street; seventh, occupation; eighth, naturalized; ninth, date of registration; tenth, whether sworn to truth of matters in entry; eleventh cancellation of registration; over the heads of the fifth and sixth columns, residence; in the column headed "naturalized," in the left hand portion of the first, second and third faint line space respectively, shall be the words, date, place, court; and similarly for all the said faint line spaces to the foot of the folio page.

SEC. 3. The registers of the voters in the precincts shall be known as poll books. Each poll book shall be of the same size as the county

register, seventeen by twenty-one inches, shall be made of durable paper, and shall be properly indexed. It shall contain the same number of folio pages as are given to that particular polling place in the county register. It shall bear, printed on the back, the following:

Poll book. Polling place No. ...., of ..... precinct. .... county, State of Oregon, 18..

Following the title page, securely bound in, shall be the same rules and instructions for judges and clerks of elections as appear in the precinct register, as set out in section 1 of this act.

On the next page shall be printed the following oaths of judges and clerks of election:

## OATH OF JUDGES.

STATE OF OREGON, }  
County of ..... } ss.

I, ....., and I, ....., and I, ..... do solemnly swear that I will perform the duties of judge of election according to law, and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

Subscribed and sworn to before me this ... day of ....., 18....

.....  
.....  
.....

Judges.

## OATH OF CLERKS.

STATE OF OREGON, }  
County of ... } ss.

I, ....., and I, ....., do solemnly swear that I will perform the duties of clerk of election according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same.

Subscribed and sworn to before me this ..... day of ....., 18....

.....  
.....

Clerks.

The rulings and headings shall be the same throughout as in the county register, described in section 2 of this act, except as follows: There shall be a blue line five-eighths of an inch to the right of the second blue line, perpendicular to the head line from the left hand edge of the folio page, said line being parallel to and similar to the last mentioned blue line, the additional column thus formed being headed Voted; and the column headed "Names," being decreased in width accordingly. Above the head line shall be printed the following: Poll Book, Polling Place No. ...., of ..... Precinct, ..... County, State of Oregon, 18....

SEC. 4. The poll book described in the next preceding section

shall be used as and for a "ward register" as prescribed in section 24 of the act, to which reference is made in the title of this act.

SEC. 5. The certificates of registration, printed on durable paper, shall be as follows:

**CERTIFICATE OF REGISTRATION.**

....., 18....  
 Polling Place No. .... Precinct. .... County,  
 Oregon, No. ....  
 This is to certify that....., who resides at..... has  
 been admitted to registration, and is entitled to vote at the ensuing election in Polling  
 Place No. .... Precinct, ..... County, Oregon, for  
 county officers, and in any county of the State of Oregon for State officers.

.....  
 Chairman of the Board of Judges.

This certificate remains in force two years, and may be used at all general, special, or municipal elections held within that time, at which the elector is qualified to vote.

SEC. 6. The registers, books and certificates mentioned herein shall be purchased by the county courts of the several counties of the State.

SEC. 7. All acts or parts of acts inconsistent herewith are hereby repealed. In order that the several county courts may have time to prepare for elections of the ensuing year, this act shall take effect and be in force from and after its approval by the Governor.

Approved November 30, 1885.

**ACT APPROVED NOVEMBER 25, 1885.**

(See Laws Special Session, 1885, page 28.)

AN ACT to amend Section 49 of an Act entitled "An Act to provide for the Registration of Voters; regulating the Manner of Conducting Elections; providing for the Prevention and Punishment of Frauds affecting the Elective Franchise, and repealing Title 1 of Chapter 14, of the Miscellaneous Laws" of Oregon, approved February 24, 1885.

*Be it enacted by the Legislative Assembly of the State of Oregon:*

SECTION 1. That section 49 of an act entitled "An act to provide for the registration of voters; regulating the manner of conducting elections; providing for the prevention and punishment of frauds affecting the elective franchise, and repealing title 1 of chapter 14 of the miscellaneous laws of Oregon," approved February 24, 1885, be, and the same is, hereby amended so as to read as follows:

Section 49. There shall be allowed out of the county treasury of each county, to the several judges and clerks of elections, three dollars per day while sitting as a board to register voters, and while holding elections, and to the person carrying the poll books from the place of election to the clerk's office, the sum of ten cents per mile for going and returning, to be paid out of the county treasury; *Provided, however,* That the board of county commissioners of each county shall, immediately after any general election, audit and allow all amounts paid by their respective counties to the judges and clerks of elections, while sitting as a board to register voters, which amounts, when so audited and allowed, shall be deducted from the amount of State taxes next thereafter falling due, from such counties respectively, and they shall be entitled to have the same credited upon the amount of the State taxes, charged to them respectively.

Approved November 25, 1885.

# INDEX.

	PAGE.
The Constitution of the United States .....	3 to 33
U. S. laws relating to naturalization of aliens .....	34 to 41
Constitution of the State of Oregon .....	42 to 73
An act regulating the manner of electing United States Senators .....	73 and 74
The Elections Laws of the State of Oregon .....	75
Of general elections, and conduct of the same .....	75
Of the canvass by the judges and clerks .....	76
Of the canvass by the county clerk—the Secretary of State and the Governor .....	79
Of the manner of contesting election to district, county or precinct offices .....	81
Of resignations .....	82
Of vacancies .....	83
Of supplying vacancies .....	84
Of the commencement and close of term of office .....	85
Of the election of presidential electors .....	85
Act of February 24, 1885, providing for registration of voters, and manner of conducting elections .....	87 to 104
Act of November 19, 1885, amending section 1 of act of February 24, 1885 .....	104
Act of November 25, 1885, amending sections 4, 10, 14, 15 and 24, of act of February 24, 1885 .....	105 to 107
Act of November 30, 1885, providing for a uniform system of books and certificates for the registration of voters .....	107 to 122
Act of November 25, 1885, amending section 49 of act approved February 24, 1885 .....	122 and 123

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**This book is under no circumstances to be  
taken from the Building**

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